

HB 1944

79R711 JMM-D

By: Solomons

H.B. No. 1944

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners and the regulation of health care professions regulated by those state agencies; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

SECTION 1.01. Section 151.002(a)(1), Occupations Code, is amended to read as follows:

(1) "Board" means the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

SECTION 1.02. Section 151.004, Occupations Code, is amended to read as follows:

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical [~~State~~] Board [~~of Medical Examiners~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September 1, 2017 [~~2005~~].

SECTION 1.03. Section 152.001, Occupations Code, is amended to read as follows:

Sec. 152.001. TEXAS MEDICAL [~~STATE~~] BOARD [~~OF MEDICAL EXAMINERS~~]. (a) The Texas Medical [~~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) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

SECTION 1.04. Section 152.003(b), Occupations Code, is amended to read as follows:

(b) A person may not be a public member of the board if the person or the person's spouse [~~may not be~~]:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care [~~licensed to practice medicine~~];

(2) is employed by or participates in the management of a business entity or other [~~financially involved in any~~] organization regulated by or receiving money from [~~subject to regulation by~~] the board; [~~or~~]

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

(4) uses or receives a substantial amount of tangible

goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses [a provider of health care].

SECTION 1.05. Sections 152.004(a)-(e), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade ~~[or professional]~~ association" means a ~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder~~[, paid full-time faculty member,]~~ or a member of the board of trustees of a medical school.

(c) A person may not be a member of the board and may not be a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an ~~[serving as the president, vice president, secretary, or treasurer of a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine, or is an employee of such an organization.~~

~~[(d) An]~~ officer, employee, or paid consultant of a Texas trade ~~[or professional]~~ association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or

(2) the person's ~~[may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.~~

~~[(e) A person who is the]~~ spouse is ~~[of]~~ an officer, manager, or paid consultant of a Texas trade ~~[or professional]~~ association in the field of health care ~~[may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].~~

SECTION 1.06. Subchapter A, Chapter 152, Occupations Code, is amended by adding Section 152.0041 to read as follows:

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

SECTION 1.07. Sections 152.006(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 152.002;

(2) does not maintain during service on the board the qualifications required by Section 152.002;

(3) is ineligible for membership under Sections 152.003 and [violates a prohibition established by Section] 152.004;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

SECTION 1.08. Section 152.008, Occupations Code, is amended to read as follows:

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

SECTION 1.09. Sections 152.010(a)-(c), Occupations Code, are amended to read as follows:

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes [Before a board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of] a training program that complies with [established by the board under] this section.

(b) The training program must [shall] provide the person with information [to a participant] regarding:

(1) this subtitle;
(2) the programs operated by the board;
(3) the role and functions of the board;
(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the board;
(6) the results of the most recent formal audit of the board;

(7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest [Chapters 551, 552, 2001, and 2002, Government Code]; and

(8) [the requirements of the conflict of interest laws and other laws relating to public officials; and

(-9)] any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

~~or after the person qualifies for office. [In developing the training program, the board shall consult with the governor, the attorney general, and the Texas Ethics Commission.]~~

SECTION 1.10. Section 152.056, Occupations Code, is amended to read as follows:

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate ~~[define]~~ the ~~policy-making [respective]~~ responsibilities of the board and the management responsibilities of the executive director and the

staff of the board.

SECTION 1.11. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0015 to read as follows:

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the board provides notice of the proposed rule under Section 2001.023, Government Code.

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

(c) The guidelines adopted under this section shall also include procedures for the board to receive comments on rules recommended by the acupuncture board and physician assistant board for adoption by the board.

SECTION 1.12. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0045 to read as follows:

Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 1.13. Subchapter B, Chapter 153, Occupations Code, is amended by adding Sections 153.057 and 153.058 to read as follows:

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

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 1.14. Section 154.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board shall publish information regarding errors in and reversals of disciplinary actions taken by the board. The information required by this subsection includes instances in which a disciplinary action initiated by the board is overturned by a court. The board shall disseminate the information required to be published under this subsection in the same manner as the information regarding the original action by the board was disseminated, subject to the approval of the affected physician, physician's authorized representative, or an arbitrator.

SECTION 1.15. Section 154.052, Occupations Code, is amended to read as follows:

Sec. 154.052. RECORDS OF COMPLAINTS. The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain [keep an] information [file] about [each complaint filed with the board. The information file must be kept current and contain a record for each complaint of]:

(1) the parties to the complaint;
(2) the subject matter of the complaint;
(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint [each potential witness contacted in relation to the complaint;

~~[(2) a summary of findings made at each step of the complaint process;~~

~~[(3) an explanation of the legal basis and reason for the dismissal of a complaint;~~

~~[(4) the schedule for the disposition of the complaint prepared as required under Section 154.056 and a notation of any change in the schedule; and~~

~~[(5) other relevant information].~~

SECTION 1.16. Section 154.053(c), Occupations Code, is amended to read as follows:

(c) The board shall periodically [If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall] notify the parties to the complaint of the status of the complaint until final disposition [unless the notice would jeopardize an investigation].

SECTION 1.17. Section 154.056(e), Occupations Code, is amended to read as follows:

(e) The board by rule shall provide for an expert physician panel appointed by the board to assist with complaints and investigations relating to medical competency. Each member of an expert physician panel must be licensed to practice medicine in this state. The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on a panel, grounds for removal from a panel, the avoidance of conflicts of interest, and the duties to be performed by the panel. The board's rules governing grounds for removal from a panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The board's rules governing the composition of a panel must include a requirement that the board randomly select panel members to the extent permitted by the conflict of interest provisions adopted under this subsection.

SECTION 1.18. Subchapter B, Chapter 154, Occupations Code,

is amended by adding Section 154.0561 to read as follows:

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN PANEL. (a) A physician on an expert physician panel authorized by Section 154.056(e) who reviews a complaint shall:

(1) determine whether the physician who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second physician on the panel shall review the first physician's preliminary report and other information associated with the complaint. If the second expert physician agrees with the first expert physician, the first physician shall issue a final written report on the matter.

(c) If the second expert physician does not agree with the conclusions of the first expert physician, a third physician on the panel shall review the preliminary report and information and decide between the conclusions reached by the first two expert physicians. The final written report shall be made by the third physician or the physician with whom the third physician concurs.

SECTION 1.19. Section 154.057(b), Occupations Code, is amended to read as follows:

(b) The board shall complete ~~make~~ a preliminary investigation of the complaint not later than the 30th day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to file an official complaint. If the 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. Section 155.002, Occupations Code, is amended to read as follows:

Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

(1) submits to the board a license application as required by this chapter;
(2) presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and
(3) satisfies the examination requirements of Section 155.051.

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

SECTION 1.21. Section 155.003(a), Occupations Code, is amended to read as follows:

(a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

(1) is at least 21 years of age;
(2) is of good professional character and has not violated Section 164.051, 164.052, or 164.053;
(3) has completed:
(A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;
(B) the entire primary, secondary, and

premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(C) substantially equivalent courses as determined by board rule;

(4) is a graduate of a medical school located in the United States or Canada and approved by the board;

(5) has either:

(A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or

(B) graduated from a medical school located outside the United States or Canada and has successfully completed three years of graduate medical training approved by the board in the United States or Canada;

(6) has passed [~~within three attempts~~] an examination accepted or administered by the board[~~, except as provided by Section 155.056~~]; and

(7) has passed a Texas medical jurisprudence examination as determined by board rule.

SECTION 1.22. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.006 to read as follows:

Sec. 155.006. ISSUANCE OF INSTITUTIONAL MEDICAL LICENSE.

(a) The board may issue and renew a license under this section to a foreign medical graduate who has extensive and verifiable academic or clinical qualifications and achievements and who is recommended and endorsed by the president or dean of an accredited medical school in this state.

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

(c) A license issued under this section expires when the license holder's employment at the medical school ends.

SECTION 1.23. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.009 to read as follows:

Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the issuance of a license that limits the license holder to the practice of administrative medicine. The board's rules under this section must include provisions for the issuance and renewal of the license, the fees applicable to the license, continuing education requirements, and the scope of practice of a person who holds the license.

(b) An applicant for a license under this section must meet all of the requirements for issuance of a license under Section 155.002.

(c) A license holder under this section who seeks to practice medicine under a license issued under Section 155.002 must provide proof to the board that the license holder has the clinical competence to practice medicine under that license. The board may require the license holder to pass any examination the board determines necessary.

SECTION 1.24. Section 155.056, Occupations Code, is amended to read as follows:

Sec. 155.056. REEXAMINATION. (a) An applicant must pass each part of an examination within three attempts[~~, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time~~].

(b) The board shall adopt rules that prescribe how the limit on the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license as a doctor of osteopathic

medicine and who attempts more than one type of examination.

~~[Notwithstanding Subsection (a), an applicant is considered to have satisfied the requirements of this section if the applicant:~~

~~[(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;~~

~~that:~~

~~[(A) is a member of the American Board of Medical Specialties; or~~

~~[(B) is approved by the American Osteopathic Association; and~~

~~[(3) completed in this state an additional two years of postgraduate medical training approved by the board.]~~

SECTION 1.25. Section 156.001(a), Occupations Code, is amended to read as follows:

(a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license ~~[and expires on the last day of the birth month of the license holder].~~ The board by rule may adopt a system under which licenses expire on various dates during the year.

SECTION 1.26. Section 157.051(2), Occupations Code, is amended to read as follows:

(2) "Carrying out or signing a prescription drug order" means completing a prescription drug order presigned by the delegating physician, or the signing of a prescription by a registered nurse or physician assistant ~~[after that person has been designated to the board by the delegating physician as a person delegated to sign a prescription].~~

SECTION 1.27. Section 157.0511, Occupations Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The board shall adopt rules that require a physician who delegates the carrying out or signing of a prescription drug order under this subchapter to maintain records that show when and to whom a delegation is made. The board may access the physician's records under this subsection as necessary for an investigation.

SECTION 1.28. Section 160.006, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

(a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the Texas Workers' Compensation Commission as

provided by Section 413.0514, Labor Code.

(c) A record or report disclosed by the board under this subchapter, ~~and~~ a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Peer review documents remain confidential at the board and at the State Office of Administrative Hearings.

(e) The confidentiality requirements of this section do not apply to records used by a peer review committee, including a patient's medical records, if the records were not produced for the purposes of peer review and are otherwise available to the board.

SECTION 1.29. Section 160.010, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency case. The attorney general shall 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 board.

SECTION 1.30. Section 162.103, Occupations Code, is amended to read as follows:

Sec. 162.103. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

- (1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
- (2) ~~[an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life preserving protective reflexes;~~
- ~~(3)~~ a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;
- (3) ~~(4)~~ a licensed ambulatory surgical center;
- (4) ~~(5)~~ a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;
- (5) ~~(6)~~ a facility maintained or operated by a state or local governmental entity;
- (6) ~~(7)~~ a clinic directly maintained or operated by the United States; or
- (7) ~~(8)~~ an outpatient setting accredited by:
 - (A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
 - (B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or
 - (C) the Accreditation Association for Ambulatory Health Care.

SECTION 1.31. Sections 163.003(a) and (f), Occupations Code, are amended to read as follows:

- (a) A committee consists of seven ~~[five]~~ members appointed

by the governor, as follows:

- (1) three physician members who are doctors of medicine (M.D.);
- (2) one physician member who is a doctor of osteopathic medicine (D.O.); and
- (3) three [one] public members [member].

(f) A member of a committee is subject to law and the rules of the board, including Sections 152.004, 152.006, and 152.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code.

SECTION 1.32. Chapter 163, Occupations Code, is amended by adding Section 163.0045 to read as follows:

Sec. 163.0045. ASSISTANCE TO BOARD. The board may request members of a committee to participate in an informal meeting under Section 164.003. A committee member who participates in an informal meeting on a complaint relating to medical competency must have the qualifications of a member of an expert panel under Section 154.056(e).

SECTION 1.33. Section 164.002, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The board may not dismiss a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

SECTION 1.34. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0025 to read as follows:

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that involves only nonmedical or administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 164.003 if:

- (1) the committee of employees determines that the complaint should not be dismissed or settled;
- (2) the committee is unable to reach an agreed settlement; or
- (3) the affected physician requests that the complaint be referred for informal proceedings.

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

- (b) Rules adopted under this section must require that:
- (1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is officially filed as provided by [with the board under] Section 154.057(b) [154.051], unless good cause is shown by the board for scheduling the informal meeting after that date;
 - (2) the board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;
 - (3) the complainant and the license holder be provided an opportunity to be heard;
 - (4) at least one of the board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and

(6) [~~5~~] a member of the board's staff be at the meeting to present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting, unless the information is confidential. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the informal meeting.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including the extended illness of a board investigator and an expert physician panelist's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section.

SECTION 1.36. Subchapter A, Chapter 164, Occupations Code, is amended by adding Sections 164.0031 and 164.0032 to read as follows:

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b)(4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

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

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

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) Unless the affected physician consents to their presence, an employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician, the physician's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel.

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

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

SECTION 1.37. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0036 to read as follows:

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) The board shall provide notice to all parties to a complaint in which the investigation extends beyond the 180th day after the date the complaint is filed with the board under Section 154.051. The notice must include an explanation of the reason why the investigation has extended beyond that date.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to complete the investigation before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

SECTION 1.38. Section 164.007, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The board may change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge only if the board makes a determination required by Section 2001.058(e), Government Code.

SECTION 1.39. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0071 to read as follows:

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board.

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

SECTION 1.40. Section 164.052(a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading

statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion; ~~or~~

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board; or

(18) engages in conduct that misuses the peer review process, including fraudulent and malicious conduct, as defined by rules adopted by the board.

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

(a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians

designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the 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 and substance abuse, or professional behavior problems.

(d) The board shall refer a physician or applicant with a physical health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 1.42. Section 164.202, Occupations Code, is amended to read as follows:

Sec. 164.202. REHABILITATION ORDER. (a) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on:

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

(2) 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, if:

(A) the reporting individual has not previously been the subject of a substance abuse-related order of the board; and

(B) the applicant or license holder has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the applicant or license holder is of unsound mind;

(4) a determination of impairment based on a mental or physical examination offered to establish the impairment in an evidentiary hearing before the board in which the applicant or license holder was provided an opportunity to respond; or

(5) an admission by the applicant or license holder indicating that the applicant or license holder suffers from a potentially dangerous limitation or an inability to practice medicine with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

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

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

SECTION 1.43. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.205 to read as follows:

Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL ASSOCIATIONS. The board shall inform a local or statewide private

medical association of the association's duties with regard to a rehabilitation order imposed under Section 164.202 if the rehabilitation order imposes duties on the association. The information provided under this section must include specific directions to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation.

SECTION 1.44. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.206 to read as follows:

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 1.45. The heading to Subchapter B, Chapter 165, Occupations Code, is amended to read as follows:

SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

SECTION 1.46. Subchapter B, Chapter 165, Occupations Code, is amended by adding Section 165.052 to read as follows:

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION 1.47. The following laws are repealed:

- (1) Section 152.010(d), Occupations Code; and
- (2) Sections 157.0542(d)-(h), Occupations Code.

SECTION 1.48. Not later than January 1, 2006, the Texas Medical Board shall:

- (1) adopt the policies required by Sections 153.057 and 153.058, Occupations Code, as added by this article; and
- (2) adopt the rules required by Subtitle B, Title 3, Occupations Code, as amended by this article.

SECTION 1.49. (a) 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 Texas Medical Board do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) 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, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the

eligibility of a person for a license under Subtitle B, Title 3, Occupations Code, apply only to an application for a license filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

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

SECTION 2.01. Section 204.002(1), Occupations Code, is amended to read as follows:

(1) "Medical board" means the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~.

SECTION 2.02. Section 204.052, Occupations Code, is amended to read as follows:

Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician assistant board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three practicing physician assistant members who each have at least five years of clinical experience as a physician assistant;

(2) three physician members who are licensed in this state and who supervise physician assistants; and

(3) three public members who are not licensed as a physician or physician assistant.

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

SECTION 2.03. Section 204.053, Occupations Code, is amended to read as follows:

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or profession problems and in promoting their common interest.

(b) A person may not be ~~[is not eligible for appointment as]~~ a public member of the physician assistant board if the person or the person's spouse:

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

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

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

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or physician

assistant board other than compensation or reimbursement authorized by law for physician assistant board membership, attendance, or expenses [that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].

(c) ~~(b)~~ A person may not be [serve as] a member of the physician assistant board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

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

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

SECTION 2.04. Section 204.055, Occupations Code, is amended to read as follows:

Sec. 204.055. OFFICERS. The governor shall designate a public member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The physician assistant board shall select from its membership a [presiding officer and a] secretary to serve a

one-year term [terms].

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

(a) It is a ground for removal from the physician assistant board that a member:

(1) does not have at the time of taking office [appointment] the qualifications required by Sections 204.052 and 204.053 [this subchapter for appointment to the board];

(2) does not maintain during [the] service on the physician assistant board the qualifications required by Sections 204.052 and 204.053 [this subchapter for appointment to the board];
[or]

(3) is ineligible for membership under Section 204.053;

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

(5) is absent from more than half of the regularly scheduled physician assistant board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board [fails to attend at least one half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year].

(c) If the executive director of the medical board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the physician assistant board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director

shall notify the next highest ranking officer of the physician assistant board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 2.06. Subchapter B, Chapter 204, Occupations Code, is amended by adding Section 204.059 to read as follows:

Sec. 204.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the physician assistant board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the physician assistant board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the physician assistant board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the physician assistant board or the Texas Ethics Commission.

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

SECTION 2.07. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.1015 to read as follows:

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The physician assistant board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the physician assistant board submits the rule to the medical board for approval.

(b) In implementing the guidelines adopted under this section, the physician assistant board shall exercise its judgment in determining which rules require input as described by Subsection (a).

SECTION 2.08. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.105 to read as follows:

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The physician assistant board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 2.09. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.106 to read as follows:

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that clearly separate the policy-making responsibilities of the physician assistant board and the management responsibilities of the executive director and the staff of the medical board.

SECTION 2.10. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.107 to read as follows:

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

physician assistant board.

SECTION 2.11. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.108 to read as follows:

Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician assistant board shall maintain a system to promptly and efficiently act on complaints filed with the physician assistant board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

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

(3) information about the disposition of the complaint.

(b) The physician assistant board shall make information available describing its procedures for complaint investigation and resolution.

(c) The physician assistant board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

SECTION 2.12. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.109 to read as follows:

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

SECTION 2.13. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.110 to read as follows:

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 2.14. Section 204.152, Occupations Code, is amended to read as follows:

Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician assistant board shall issue a license to an applicant who:

(1) meets the eligibility requirements of Section 204.153;

(2) submits an application on a form prescribed by the board;

(3) pays the required application fee;

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant; and

(5) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications.

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

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

(a) To be eligible for a license under this chapter, an applicant must:

(1) successfully complete an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;

(2) pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(3) hold a certificate issued by the National Commission on Certification of Physician Assistants;

(4) be of good moral character; ~~and~~

(5) meet any other requirement established by board rule; and

(6) pass a jurisprudence examination approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a) (6) regarding:

(1) the development of the examination;

(2) applicable fees;

(3) administration of the examination;

(4) reexamination procedures;

(5) grading procedures; and

(6) notice of results.

SECTION 2.16. Section 204.156, Occupations Code, is amended to read as follows:

Sec. 204.156. LICENSE RENEWAL. (a) On notification from the physician assistant board, a person who holds a license under this chapter may renew the license by:

(1) paying the required renewal fee;

(2) submitting the appropriate form; and

(3) meeting any other requirement established by board rule.

(b) The physician assistant board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the physician assistant board before the expiration date of the license. A person whose license has expired may not engage in

activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the physician assistant board a fee that is equal to 1-1/2 times the renewal fee for the license.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the physician assistant board a fee equal to two times the renewal fee for the license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of the application may obtain a new license without reexamination. The person must pay to the physician assistant board a fee that is equal to two times the normally required renewal fee for the license.

SECTION 2.17. Subchapter D, Chapter 204, Occupations Code, is amended by adding Section 204.1562 to read as follows:

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

(a) The physician assistant board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The physician assistant board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the physician assistant board determines appropriate as a prerequisite to the renewal of a license under this chapter;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be approved by the physician assistant board; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) The physician assistant board may require that a specified number of continuing medical education hours be completed informally, including through self-study and self-directed education.

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

(c) A person whose license is on inactive status under this section may return the person's license to active status by:

(1) applying to the physician assistant board; ~~and~~

(2) satisfying the requirements of Section 204.156;

and

(3) paying the fee established by the physician assistant board for returning a license to active status.

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

SECTION 2.19. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3011 to read as follows:

Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The physician assistant board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that involves only nonmedical or administrative violations. The disposition determined by the committee must be approved by the physician assistant board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 204.312 if:

(1) the committee of employees determines that the

complaint should not be dismissed or settled;

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

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

SECTION 2.20. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3045 to read as follows:

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The physician assistant board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the physician assistant board 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) The physician assistant board shall refer a physician assistant or applicant with a physical health condition to the most appropriate medical specialist for evaluation. The physician assistant board may not require a physician assistant or applicant to submit to an examination by a physician having a specialty specified by the physician assistant board unless medically indicated. The physician assistant board may not require a physician assistant or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician assistant or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 2.21. Section 204.305, Occupations Code, is amended to read as follows:

Sec. 204.305. REHABILITATION ORDER. (a) The physician assistant board, through an agreed order or after a contested proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

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

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

(A) reported the use; ~~and~~

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

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

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

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

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

(c) The physician assistant board may not issue an order under this section if, before the individual signs the proposed order, the physician assistant board receives a valid complaint with regard to the individual based on the individual's intemperate

use of drugs or alcohol in a manner affecting the standard of care.

SECTION 2.22. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3075 to read as follows:

Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. The physician assistant board shall inform an association of physician assistants of the association's duties with regard to a rehabilitation order imposed under Section 204.305 if the rehabilitation order imposes duties on the association. The information provided under this section must include specific directions to enable the association to comply with any requirements necessary to assist in the physician assistant's rehabilitation.

SECTION 2.23. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.312 to read as follows:

Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician assistant board by rule shall adopt procedures governing:

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

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

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

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

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

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

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

(5) the physician assistant board's legal counsel or a representative of the attorney general be present to advise the physician assistant board or the physician assistant board's staff; and

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

(c) An affected physician assistant is entitled to:

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

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

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

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

SECTION 2.24. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.313 to read as follows:

Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 204.312, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 204.312(b)(4), an informal proceeding may be conducted by one panelist if the affected physician assistant waives the requirement that at least two panelists conduct the informal proceeding. If the physician assistant waives that requirement, the panelist may be any member of the physician assistant board.

(c) The panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the physician assistant board under Section 204.312, including a proceeding to:

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

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the physician assistant board under Section 204.312 to show compliance with an order of the physician assistant board.

SECTION 2.25. Subchapter G, Chapter 204, Occupations Code, is amended by adding Sections 204.314 and 204.3145 to read as follows:

Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A physician assistant board member that serves as a panelist at an informal meeting under Section 204.312 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

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

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

(d) The panel and medical board employees shall provide an opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the physician assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) Unless the affected physician assistant consents to their presence, an employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician assistant, the physician assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected

physician assistant has violated a statute or physician assistant board rule, the panel may recommend physician assistant board action and terms for an informal settlement of the case.

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

Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The physician assistant board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 2.26. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.315 to read as follows:

Sec. 204.315. SURRENDER OF LICENSE. (a) The physician assistant board may accept the voluntary surrender of a license.

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

(c) The physician assistant board by rule shall establish guidelines for determining the competency of a former license holder to return to practice.

SECTION 2.27. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.316 to read as follows:

Sec. 204.316. REFUND. (a) Subject to Subsection (b), the physician assistant board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Section 204.351.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The physician assistant board may not require payment of other damages or estimate harm in a refund order.

SECTION 2.28. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.317 to read as follows:

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The physician assistant board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the physician assistant board makes a determination required by Section 2001.058(e), Government Code.

SECTION 2.29. The heading to Subchapter H, Chapter 204, Occupations Code, is amended to read as follows:

SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 2.30. Subchapter H, Chapter 204, Occupations Code, is amending by adding Section 204.353 to read as follows:

Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to the physician assistant board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to physician assistant practice, the board after notice and opportunity for a hearing may issue a cease and desist order

prohibiting the person from engaging in the activity.

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

SECTION 2.31. Section 204.004, Occupations Code, is repealed.

SECTION 2.32. (a) Not later than January 1, 2006, the Texas State Board of Physician Assistant Examiners shall:

(1) adopt the policies required by Sections 204.109 and 204.110, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 204, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Physician Assistant Examiners shall develop the jurisprudence examination required by Section 204.153, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 204.153, Occupations Code, as amended by this article, applies only to an individual who applies for a license as a physician assistant on or after September 1, 2006.

SECTION 2.33. (a) 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 Texas State Board of Physician Assistant Examiners do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) 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, apply only to a complaint filed with the Texas State Board of Physician Assistant Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Physician Assistant Examiners to issue, renew, or revoke a license under Chapter 204, Occupations Code, apply only to an application for a license filed with the Texas State Board of Physician Assistant Examiners under Chapter 204, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

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

SECTION 3.01. Sections 205.001(6), (7), and (8), Occupations Code, are amended to read as follows:

(6) "Executive director" means the executive director of the Texas Medical [State] Board [~~of Medical Examiners~~].

(7) "Medical board" means the Texas Medical [State] Board [~~of Medical Examiners~~].

(8) "Physician" means a person licensed to practice medicine by the Texas Medical [State] Board [~~of Medical Examiners~~].

SECTION 3.02. Section 205.051(a), Occupations Code, is amended to read as follows:

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

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

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

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

SECTION 3.03. Sections 205.053(a), (c), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~r~~] and voluntarily joined statewide

association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(c) A person [~~who is the spouse of an officer, board member, manager, or paid consultant of a Texas trade association in the field of health care~~] may not be a member of the acupuncture board and may not be a an employee of the medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

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

SECTION 3.04. Section 205.055, Occupations Code, is amended to read as follows:

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

SECTION 3.05. Section 205.057, Occupations Code, is amended to read as follows:

Sec. 205.057. TRAINING. (a) A [~~To be eligible to take office as a member of the acupuncture board, a~~] person who is

appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes [~~must complete at least one course of~~] a training program

that complies with this section.

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

- (1) this chapter [~~and the acupuncture board~~];
- (2) the programs operated by the acupuncture board;
- (3) the role and functions of the acupuncture board;
- (4) the rules of the acupuncture board [~~, with an emphasis on the rules that relate to disciplinary and investigatory authority~~];
- (5) the current budget for the acupuncture board;
- (6) the results of the most recent formal audit of the acupuncture board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest [~~the~~];

[~~(A) open meetings law, Chapter 551, Government Code,~~

[~~(B) open records law, Chapter 552, Government Code, and~~

[~~(C) administrative procedure law, Chapter 2001, Government Code~~]; and

(8) [~~the requirements of the conflict of interest laws and other laws relating to public officials; and~~

[~~(9)~~] any applicable ethics policies adopted by the acupuncture [~~medical~~] board or the Texas Ethics Commission.

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

SECTION 3.06. Section 205.101, Occupations Code, is amended to read as follows:

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

- (1) establish qualifications for an acupuncturist to practice in this state;
- (2) establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;
- (3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;
- (4) develop requirements for licensure by endorsement of other states;
- (5) prescribe the application form for a license to practice acupuncture;
- (6) recommend rules to establish licensing and other fees [~~make recommendations on applications for licenses to practice acupuncture~~];
- (7) establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college; and
- (8) recommend additional rules as are necessary to administer and enforce this chapter.

(b) The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.

(c) The acupuncture board shall:

- (1) review and approve or reject each application for the issuance or renewal of a license;
- (2) issue each license; and
- (3) deny, suspend, or revoke a license or otherwise discipline a license holder.

SECTION 3.07. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1041 to read as follows:

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

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

SECTION 3.08. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1045 to read as follows:

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The acupuncture board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 3.09. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.106 to read as follows:

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

SECTION 3.10. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.107 to read as follows:

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

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

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

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

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

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

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

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

SECTION 3.11. Section 205.201, Occupations Code, is amended to read as follows:

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

SECTION 3.12. Section 205.202, Occupations Code, is amended to read as follows:

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

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

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

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

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

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

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

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

SECTION 3.14. Section 205.206, Occupations Code, is amended by adding Subsection (c) to read as follows:

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

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

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

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

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

acupuncture board for review and approval.

SECTION 3.16. Sections 205.351(b) and (c), Occupations Code, are amended to read as follows:

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

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

SECTION 3.17. Section 205.352, Occupations Code, is amended to read as follows:

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

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

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

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

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

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

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

(6) assess an administrative penalty against the person as provided by Subchapter J [~~Chapter 165~~];

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

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

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

(10) require the person to report regularly to the acupuncture board on matters that are the basis of the probation under Subdivision (8); or

(11) administer a public reprimand.

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

SECTION 3.18. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3522 to read as follows:

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

(b) A surrendered license may not be returned to the license

holder unless the acupuncture board determines, under acupuncture board rules, that the former holder of the license is competent to resume practice.

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

SECTION 3.19. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3523 to read as follows:

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

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 3.20. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3541 to read as follows:

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

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

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

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

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

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

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

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

(5) the acupuncture board's legal counsel or a representative of the attorney general be present to advise the acupuncture board or the board's staff; and

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

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

(1) reply to the staff's presentation; and
(2) present the facts the acupuncturist reasonably believes the acupuncturist could prove by competent evidence or qualified witnesses at a hearing.

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

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

SECTION 3.21. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3542 to read as follows:

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

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

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

(1) consider a disciplinary case to determine if a violation has occurred; or
(2) request modification or termination of an order.

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

SECTION 3.22. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3543 to read as follows:

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

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

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

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

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

(e) Unless the affected acupuncturist consents to their presence, an employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected acupuncturist, the acupuncturist's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel.

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

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

SECTION 3.23. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3544 to read as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 3.24. Section 205.356, Occupations Code, is amended to read as follows:

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

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

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

(A) reported the use; ~~and~~

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

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

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

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

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

(c) The acupuncture board may not issue an order under this section if, before the individual signs the proposed order, the

board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

SECTION 3.25. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3561 to read as follows:

Sec. 205.3561. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. The acupuncture board shall inform a local or statewide private acupuncture association of the association's duties with regard to a rehabilitation order imposed under Section 205.356 if the rehabilitation order imposes duties on the association. The information provided under this section must include specific directions to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

SECTION 3.26. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.360 to read as follows:

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that involves only nonacupuncture or administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

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

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

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

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

SECTION 3.27. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.361 to read as follows:

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

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

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

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

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

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

SECTION 3.28. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.362 to read as follows:

Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to the acupuncture board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice

of acupuncture, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 205.352.

SECTION 3.29. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.363 to read as follows:

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

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order.

SECTION 3.30. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.364 to read as follows:

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code.

SECTION 3.31. Sections 205.402(a) and (d), Occupations Code, are amended to read as follows:

(a) The acupuncture [~~medical~~] board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

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

SECTION 3.32. The heading to Subchapter I, Chapter 205, Occupations Code, is amended to read as follows:

SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 3.33. Chapter 205, Occupations Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

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

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

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

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

(1) the seriousness of the violation, including:
(A) the nature, circumstances, extent, and gravity of any prohibited act; and

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

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

(3) the history of previous violations;

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

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

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

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

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

(1) pay the penalty;

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

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

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

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

Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty

and order the person to pay the full or reduced penalty.

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

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

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

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

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

SECTION 3.34. Sections 205.002 and 205.353, Occupations Code, are repealed.

SECTION 3.35. (a) Not later than January 1, 2006, the Texas State Board of Acupuncture Examiners shall:

(1) adopt the policies required by Sections 205.106 and 205.107, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 205, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Acupuncture Examiners shall develop the jurisprudence examination required by Section 205.203, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 205.203, Occupations Code, as amended by this article, applies only to an individual who applies for a license as an acupuncturist on or after September 1, 2006.

SECTION 3.36. (a) 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 Texas State Board of Acupuncture Examiners do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) 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, apply only to a complaint filed with the Texas State Board of Acupuncture Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Acupuncture Examiners to issue, renew, or revoke a license under Chapter 205, Occupations Code, apply only to an application for a license filed with the Texas State Board of Acupuncture Examiners under Chapter 205, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in

effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Section 206.001(5), Occupations Code, is amended to read as follows:

(5) "Medical board" means the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~.

SECTION 4.02. Section 206.209, Occupations Code, is amended to read as follows:

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

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

SECTION 4.03. Section 206.305, Occupations Code, is amended to read as follows:

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

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

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

(A) reported the use; ~~and~~

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

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

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

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

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

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

SECTION 4.04. Subchapter G, Chapter 206, Occupations Code, is amended by adding Section 206.3075 to read as follows:

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.
The medical board shall inform an association of surgical assistants of the association's duties with regard to a rehabilitation order imposed under Section 206.305 if the rehabilitation order imposes duties on the association. The information provided under this section must include specific directions to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

SECTION 4.05. Subchapter G, Chapter 206, Occupations Code, is amended by adding Sections 206.313-206.315 to read as follows:

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

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

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

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

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

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

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

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

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

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

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

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

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

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

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

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request

the assistance of a board employee at any time.

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

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

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) Unless the affected surgical assistant consents to their presence, an employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant, the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel.

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

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may 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) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313. At least one of the committee members who participates in an informal meeting as described by Subsection (a) must be a public member.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

SECTION 4.06. 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, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. This Act takes effect September 1, 2005.

SB419

79R14346 JMM-D

By: Nelson

S.B. No. 419

Substitute the following for S.B. No. 419:

By: Dawson

C.S.S.B. No. 419

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners and the regulation of health care professions regulated by those state agencies; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

SECTION 1.01. Sections 151.002(a)(1) and (7), Occupations Code, are amended to read as follows:

(1) "Board" means the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care practitioner;

(D) report made to a medical peer review committee concerning activities under the committee's review authority;

(E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and

(F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

SECTION 1.02. Section 151.004, Occupations Code, is amended to read as follows:

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical [~~State~~] Board [~~of Medical Examiners~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September 1, 2017 [~~2005~~].

SECTION 1.03. Section 152.001, Occupations Code, is amended to read as follows:

Sec. 152.001. TEXAS MEDICAL ~~[STATE]~~ BOARD ~~[OF MEDICAL EXAMINERS]~~. (a) The Texas Medical ~~[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) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

SECTION 1.04. Section 152.003(b), Occupations Code, is amended to read as follows:

(b) A person may not be a public member of the board if the person or the person's spouse ~~[may not be]~~:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care ~~[licensed to practice medicine]~~;

(2) is employed by or participates in the management of a business entity or other ~~[financially involved in any]~~ organization regulated by or receiving money from ~~[subject to regulation by]~~ the board; ~~[or]~~

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

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

(5) is a provider of health care.

SECTION 1.05. Sections 152.004(a)-(e), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade ~~[or professional]~~ association" means a ~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder~~[, paid full-time faculty member,]~~ or a member of the board of trustees of a medical school.

(c) A person may not be a member of the board and may not be a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an ~~[serving as the president, vice president, secretary, or treasurer of a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine, or is an employee of such an organization.~~

~~[(d) An]~~ officer, employee, or paid consultant of a Texas trade ~~[or professional]~~ association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or

(2) the person's ~~[may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.~~

~~[(e) A person who is the]~~ spouse is ~~[of]~~ an officer,

manager, or paid consultant of a Texas trade [~~or professional~~] association in the field of health care [~~may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

SECTION 1.06. Subchapter A, Chapter 152, Occupations Code, is amended by adding Section 152.0041 to read as follows:

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access solely by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

SECTION 1.07. Sections 152.006(a) and (c), Occupations Code, are amended to read as follows:

- (a) It is a ground for removal from the board that a member:
- (1) does not have at the time of taking office [~~appointment~~] the qualifications required by Section 152.002;
 - (2) does not maintain during service on the board the qualifications required by Section 152.002;
 - (3) is ineligible for membership under Sections 152.003 and [~~violates a prohibition established by Section~~] 152.004;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
 - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

SECTION 1.08. Section 152.008, Occupations Code, is amended to read as follows:

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

SECTION 1.09. Sections 152.010(a)-(c), Occupations Code, are amended to read as follows:

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes [~~Before a board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of~~] a training program that complies with [~~established by the board under~~] this section.

(b) The training program must [~~shall~~] provide the person with information [~~to a participant~~] regarding:

- (1) this subtitle;

(2) the programs operated by the board;
(3) the role and functions of the board;
(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the board;
(6) the results of the most recent formal audit of the board;

(7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest [Chapters 551, 552, 2001, and 2002, Government Code]; and

~~(8) [the requirements of the conflict of interest laws and other laws relating to public officials, and~~
~~[(9)] any applicable ethics policies adopted by the board or the Texas Ethics Commission.~~

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. [In developing the training program, the board shall consult with the governor, the attorney general, and the Texas Ethics Commission.]

SECTION 1.10. Section 152.056, Occupations Code, is amended to read as follows:

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [define] the policy-making [respective] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 1.11. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0015 to read as follows:

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction, including input from the Texas State Board of Physician Assistant Examiners and the Texas State Board of Acupuncture Examiners. The guidelines must provide an opportunity for those individuals and groups to provide input before the board provides notice of the proposed rule under Section 2001.023, Government Code.

(b) The guidelines adopted under this section shall also include procedures for the board to receive comments on rules recommended by the physician assistant board or acupuncture board for adoption by the board.

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

SECTION 1.12. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0045 to read as follows:

Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

SECTION 1.13. Subchapter B, Chapter 153, Occupations Code, is amended by adding Sections 153.057 and 153.058 to read as follows:

Sec. 153.057. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions.

The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 1.14. Section 154.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by this subsection, the board shall publish information regarding errors in and reversals of disciplinary actions taken by the board. The information to be published under this subsection includes instances in which a disciplinary action initiated by the board is overturned by a court. The board shall disseminate the information under this subsection in the same format, size, style, and manner as the information regarding the original action by the board was disseminated. The board may not publish information under this subsection if the physician who was the subject of the disciplinary action requests that the information not be published.

SECTION 1.15. Section 154.052, Occupations Code, is amended to read as follows:

Sec. 154.052. RECORDS OF COMPLAINTS. The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain ~~[keep an]~~ information ~~[file]~~ about ~~[each complaint filed with the board. The information file must be kept current and contain a record for each complaint of]~~:

(1) the parties to the complaint;

(2) the subject matter of the complaint;

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

(4) the disposition of the complaint ~~[each potential witness contacted in relation to the complaint;~~

~~[(2) a summary of findings made at each step of the complaint process;~~

~~[(3) an explanation of the legal basis and reason for the dismissal of a complaint;~~

~~[(4) the schedule for the disposition of the complaint prepared as required under Section 154.056 and a notation of any change in the schedule; and~~

~~[(5) other relevant information].~~

SECTION 1.16. Section 154.053(c), Occupations Code, is amended to read as follows:

(c) The board shall periodically ~~[If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final~~

~~disposition of the complaint, shall] notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an investigation.~~

SECTION 1.17. Section 154.056(e), Occupations Code, is amended to read as follows:

(e) The board by rule shall provide for an expert physician panel appointed by the board to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers. Each member of the ~~an~~ expert physician panel must be licensed to practice medicine in this state. The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected physician and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel. The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The board's rules governing appointment of expert physician panel members to act as expert physician reviewers must include a requirement that the board randomly select, to the extent permitted by Section 154.058(b) and the conflict of interest provisions adopted under this subsection, panel members to review a complaint.

SECTION 1.18. Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0561 to read as follows:

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW. (a) A physician on the expert physician panel authorized by Section 154.056(e) who is selected to review a complaint shall:

(1) determine whether the physician who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert physician reviewer shall review the first physician's preliminary report and other information associated with the complaint. If the second expert physician agrees with the first expert physician, the first physician shall issue a final written report on the matter.

(c) If the second expert physician does not agree with the conclusions of the first expert physician, a third expert physician reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two expert physicians. The final written report shall be issued by the third physician or the physician with whom the third physician concurs.

(d) In reviewing a complaint, the expert physician reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

SECTION 1.19. Section 154.057(b), Occupations Code, is amended to read as follows:

(b) The board shall complete ~~make~~ a preliminary investigation of the complaint not later than the 30th day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

SECTION 1.20. Section 155.002, Occupations Code, is amended to read as follows:

Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

- (1) submits to the board a license application as required by this chapter;
- (2) presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and
- (3) satisfies the examination requirements of Section 155.051.

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

SECTION 1.21. Section 155.003(a), Occupations Code, is amended to read as follows:

(a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good professional character and has not violated Section 164.051, 164.052, or 164.053;
- (3) has completed:
 - (A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;
 - (B) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or
 - (C) substantially equivalent courses as determined by board rule;
- (4) is a graduate of a medical school located in the United States or Canada and approved by the board;
- (5) has either:
 - (A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or
 - (B) graduated from a medical school located outside the United States or Canada and has successfully completed three years of graduate medical training approved by the board in the United States or Canada;
- (6) has passed [~~within three attempts~~] an examination accepted or administered by the board [~~, except as provided by Section 155.056~~]; and
- (7) has passed a Texas medical jurisprudence examination as determined by board rule.

SECTION 1.22. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.006 to read as follows:

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

- (1) is recommended to the board by the dean, president, or chief academic officer of:

- (A) a school of medicine in this state;
- (B) The University of Texas Health Center at

Tyler;

- (C) The University of Texas M. D. Anderson Cancer

Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

- (1) academic appointments;
- (2) length of time in a profession;
- (3) scholarly publications; and
- (4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for that license.

SECTION 1.23. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.009 to read as follows:

Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the

issuance of a license that limits the license holder to the practice of administrative medicine. The board's rules under this section must include provisions for eligibility for the license, issuance and renewal of the license, the fees applicable to the license, continuing education requirements, and the scope of practice of a person who holds the license.

(b) An applicant for a license under this section must meet all of the requirements for issuance of a license under Section 155.002.

(c) A license holder under this section who seeks to practice medicine under an unrestricted license that is not limited to the practice of administrative medicine must provide proof to the board that the license holder has the clinical competence to practice medicine under that license and must meet all applicable eligibility requirements for that license. The board may require the license holder to pass any examination the board determines necessary.

SECTION 1.24. Section 155.056, Occupations Code, is amended to read as follows:

Sec. 155.056. EXAMINATION ATTEMPT LIMITS ~~[REEXAMINATION].~~

(a) An applicant must pass each part of an examination within three attempts ~~[, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time].~~

(b) The board shall adopt rules that prescribe how the limit on the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license and who attempts more than one type of examination. [Notwithstanding Subsection (a), an applicant is considered to have satisfied the requirements of this section if the applicant:

~~[(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;~~

~~[(2) is specialty board certified by a specialty board that:~~

~~[(A) is a member of the American Board of Medical Specialties; or~~

~~[(B) is approved by the American Osteopathic Association; and~~

~~[(3) completed in this state an additional two years of postgraduate medical training approved by the board.]~~

SECTION 1.25. Section 155.104, Occupations Code, is amended to read as follows:

Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. The board by rule shall set a time limit for the term of a temporary license.

(b) The board may issue a faculty temporary license to practice medicine to a physician appointed by a medical school in this state as provided by this section. The physician:

(1) must hold a current medical license that is unrestricted and not subject to a disciplinary order or probation in another state or Canadian province or have completed at least three years of postgraduate residency;

(2) may not hold a medical license in another state or a Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the Texas medical jurisprudence examination; and

(4) must hold a salaried faculty position of at least the level of assistant professor and be working full-time at one of the following institutions:

(A) The University of Texas Medical Branch at

Galveston;

(B) The University of Texas Southwestern Medical

Center at Dallas;

(C) The University of Texas Health Science Center

at Houston;

(D) The University of Texas Health Science Center

at San Antonio;

(E) The University of Texas Health Center at

Tyler;

(F) The University of Texas M. D. Anderson Cancer

Center;

(G) Texas A&M University College of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) the University of North Texas Health Science

Center at Fort Worth.

(c) A physician is eligible for a temporary license under Subsection (b) if the physician holds a faculty position of at least the level of assistant professor and works at least part-time at an institution listed in Subsection (b) (4) and:

(1) the physician is on active duty in the United States armed forces; and

(2) the physician's practice under the temporary license will fulfill critical needs of the citizens of this state.

(d) A physician who is issued a temporary license under Subsection (b) must sign an oath on a form prescribed by the board swearing that the physician:

(1) has read and is familiar with this subtitle and board rules;

(2) will abide by the requirements of this subtitle and board rules while practicing under the physician's temporary license; and

(3) will be subject to the disciplinary procedures of the board.

(e) A physician holding a temporary license under Subsection (b) and the physician's medical school must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the medical activities of the physician.

(f) A temporary license issued under Subsection (b) is valid for one year.

(g) The holder of a temporary license issued under Subsection (b) is limited to the teaching confines of the applying medical school as a part of the physician's duties and responsibilities assigned by the school and may not practice medicine outside of the setting of the medical school or an affiliate of the medical school. The physician may participate in the full activities of the department of any hospital for which the physician's medical school has full responsibility for clinical, patient care, and teaching activities.

(h) The application for a temporary license under Subsection (b) must be made by the chairman of the department of the medical school in which the physician teaches and must contain the information and documentation requested by the department. The application must be endorsed by the dean of the medical school or the president of the institution.

(i) Three years in a teaching faculty position at an institution listed in Subsection (b) (4) may be treated as equivalent to three years of an approved postgraduate residency program if, at the conclusion of the three-year period, the physician presents recommendations on the physician's behalf from the chief administrative officer and the president of the institution.

(j) A physician who holds a temporary license issued under Subsection (b) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent unrestricted license, including any examination requirements.

SECTION 1.26. Section 156.001(a), Occupations Code, is amended to read as follows:

(a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license ~~[and expires on the last day of the birth month of the license holder]~~. The board by rule may adopt a system under which licenses expire on various dates during the year.

SECTION 1.27. Section 157.051(2), Occupations Code, is amended to read as follows:

(2) "Carrying out or signing a prescription drug order" means completing a prescription drug order presigned by the delegating physician, or the signing of a prescription by a registered nurse or physician assistant ~~[after that person has been designated to the board by the delegating physician as a person delegated to sign a prescription]~~.

SECTION 1.28. Section 157.0511, Occupations Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The board shall adopt rules that require a physician who delegates the carrying out or signing of a prescription drug order under this subchapter to maintain records that show when and to whom a delegation is made. The board may access the physician's records under this subsection as necessary for an investigation.

SECTION 1.29. Section 160.006, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

(a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the Texas Workers' Compensation Commission as provided by Section 413.0514, Labor Code.

(c) A record or report disclosed by the board under this subchapter, ~~and~~ a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Medical peer review documents remain confidential at

the board and at the State Office of Administrative Hearings. If medical peer review documents are admitted into evidence for any purpose at a proceeding before the State Office of Administrative Hearings, the documents must be admitted under seal to protect the confidentiality of the records as provided by this section and Section 160.007.

(e) The confidentiality requirements of this section do not apply to records used by a medical peer review committee, including a patient's medical records, if the records are available to the board through a means other than a medical peer review committee's records.

SECTION 1.30. Section 160.010, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency case. The attorney general shall 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 board.

SECTION 1.31. Section 162.103, Occupations Code, is amended to read as follows:

Sec. 162.103. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

- (1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
- (2) ~~[an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes;~~
- ~~(3)~~ a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;
- (3) ~~(4)~~ a licensed ambulatory surgical center;
- (4) ~~(5)~~ a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;
- (5) ~~(6)~~ a facility maintained or operated by a state or local governmental entity;
- (6) ~~(7)~~ a clinic directly maintained or operated by the United States; or
- (7) ~~(8)~~ an outpatient setting accredited by:
 - (A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
 - (B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or
 - (C) the Accreditation Association for Ambulatory Health Care.

SECTION 1.32. Sections 163.003(a) and (f), Occupations Code, are amended to read as follows:

(a) A committee consists of seven ~~[five]~~ members appointed by the governor, as follows:

- (1) three physician members who are doctors of medicine (M.D.);
- (2) one physician member who is a doctor of osteopathic medicine (D.O.); and
- (3) three ~~[one]~~ public members ~~[member]~~.

(f) A member of a committee is subject to law and the rules

of the board, including Sections 152.004, 152.006, and 152.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 152.010 shall be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

SECTION 1.33. Chapter 163, Occupations Code, is amended by adding Section 163.0045 to read as follows:

Sec. 163.0045. ASSISTANCE TO BOARD. The board may request members of a committee to participate in an informal meeting under Section 164.003. A physician committee member who participates in an informal meeting on a complaint relating to medical competency must have the qualifications of a member of an expert panel under Section 154.056(e).

SECTION 1.34. Section 164.001, Occupations Code, is amended by adding Subsection (j) to read as follows:

(j) In determining the appropriate disciplinary action, including the amount of any administrative penalty to impose, the board shall consider whether the violation relates directly to patient care or involves only an administrative violation.

SECTION 1.35. Section 164.002, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The board may not dismiss a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

SECTION 1.36. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0025 to read as follows:

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 164.003 if:

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

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

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

SECTION 1.37. Section 164.003, Occupations Code, is amended by amending Subsection (b) and adding Subsections (f), (g), and (h) to read as follows:

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

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced as provided by ~~[filed with the board under]~~ Section 154.057(b) ~~[154.051]~~, unless good cause is shown by the board for scheduling the informal meeting after that date;

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

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

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

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's

staff; and

(6) [~~5~~] a member of the board's staff be at the meeting to present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(f) The notice required by Subsection (b) (2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the informal meeting. If the complaint includes an allegation that the license holder has violated the standard of care, the notice must include a copy of the report by the expert physician reviewer. The license holder must provide to the board the license holder's rebuttal at least five business days before the date of the meeting in order for the information to be considered at the meeting.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b) (1), including the extended illness of a board investigator and an expert physician reviewer's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section.

SECTION 1.38. Subchapter A, Chapter 164, Occupations Code, is amended by adding Sections 164.0031 and 164.0032 to read as follows:

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b) (4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

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

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

before the board.

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

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

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

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

(h) If the board rejects the panel's recommendation for settlement or dismissal, the board shall notify the physician and state in the board's minutes the reason for rejecting the recommendation and specify further action to be considered. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter.

SECTION 1.39. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0036 to read as follows:

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) If an informal meeting is not scheduled for a complaint before the 180th day after the date the board's official investigation of the complaint is commenced under Section 154.057(b), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal meeting has not been scheduled. The notice under this subsection is not required if the notice would jeopardize an investigation.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

SECTION 1.40. Section 164.007, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The board may change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge only if the board makes a determination required by Section 2001.058(e), Government Code.

SECTION 1.41. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0071 to read as follows:

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's

investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board.

(c) 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 1.42. Section 164.056, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the 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 and substance abuse, or professional behavior problems.

(d) The board shall refer a physician or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 1.43. Section 164.202, Occupations Code, is amended to read as follows:

Sec. 164.202. REHABILITATION ORDER. (a) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on:

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

(2) 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, if:

(A) the reporting individual has not previously been the subject of a substance abuse-related order of the board; and

(B) the applicant or license holder has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the applicant or license holder is of unsound mind;

(4) a determination of impairment based on a mental or physical examination offered to establish the impairment in an evidentiary hearing before the board in which the applicant or license holder was provided an opportunity to respond; or

(5) an admission by the applicant or license holder indicating that the applicant or license holder suffers from a potentially dangerous limitation or an inability to practice medicine with reasonable skill and safety by reason of illness or as

a result of any physical or mental condition.

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

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

(d) The board may disclose a rehabilitation order to a local or statewide private medical association only as provided by Section 164.205.

SECTION 1.44. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.205 to read as follows:

Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 164.202 requires a license holder to participate in activities or programs provided by a local or statewide private medical association, the board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation.

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

SECTION 1.45. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.206 to read as follows:

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 1.46. The heading to Subchapter B, Chapter 165, Occupations Code, is amended to read as follows:

SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

SECTION 1.47. Subchapter B, Chapter 165, Occupations Code, is amended by adding Section 165.052 to read as follows:

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION 1.48. The following laws are repealed:

- (1) Section 152.010(d), Occupations Code; and
- (2) Sections 157.0542(d)-(h), Occupations Code.

SECTION 1.49. Not later than January 1, 2006, the Texas Medical Board shall:

- (1) adopt the policies required by Sections 153.057

and 153.058, Occupations Code, as added by this article; and

(2) adopt the rules required by Subtitle B, Title 3, Occupations Code, as amended by this article.

SECTION 1.50. (a) 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 Texas Medical Board do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The Texas Medical Board shall adopt rules necessary to implement the requirements of Section 155.006, Occupations Code, as added by this article, not later than March 1, 2006.

(c) 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, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(d) The changes in law made by this article governing the eligibility of a person for a license under Subtitle B, Title 3, Occupations Code, apply only to an application for a license filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(e) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 1.51. MEDICAL PEER REVIEW STUDY. (a) The presiding officer of each house of the legislature shall appoint a joint interim committee to study the medical peer review process in hospitals and other health care entities in this state. The study shall include an examination of:

(1) the use of medical peer review in identifying and reporting to the Texas Medical Board the conduct of or the quality of care provided by physicians who are members of the medical staffs of hospitals and other health care entities;

(2) the use of medical peer review in disciplining a physician based on the conduct or quality of care provided by the physician as a member of the medical staff of a hospital or other health care entity;

(3) the appropriate level of immunity protections for hospitals and other health care entities, medical peer review committees, and individuals who participate on those committees in health care liability claims brought by patients alleging bad faith physician credentialing; and

(4) whether there are adequate mechanisms in state law to ensure appropriate regulatory supervision of the appropriateness and effectiveness of medical peer review in hospitals and other health care entities.

(b) As part of the joint interim committee's study, the committee shall investigate:

(1) the adequacy of the Texas Medical Board's oversight and investigation of physician claims that the medical

peer review process is misused, including whether the board's oversight and investigation powers should be strengthened and how other states investigate claims of misuse of the medical peer review process;

(2) the state regulatory reporting mechanisms relating to the appropriateness and effectiveness of medical peer review in hospitals and other health care entities and the oversight and authority of the state to ensure good faith medical peer review in hospitals and other health care entities in this state;

(3) the potentially negative impact on medical peer review in this state that could result from potential changes to:

(A) immunity protections; or

(B) the oversight and investigation of physician claims of misuse of the medical peer review process;

(4) how the laws of other states address immunity protections for medical peer review; and

(5) any other matter relevant to the medical peer review process, including how state and federal law identifies physician conduct that is considered to be unprofessional or unsafe by a medical peer review committee.

(c) The Department of State Health Services and the Texas Medical Board shall provide information and assistance to the joint interim committee in conducting the investigation required by this section on the committee's request.

(d) Not later than January 1, 2007, the joint interim committee shall report the committee's findings to the governor, lieutenant governor, and speaker of the house of representatives.

(e) This section expires September 1, 2007.

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

SECTION 2.01. Section 204.002(1), Occupations Code, is amended to read as follows:

(1) "Medical board" means the Texas ~~[State Board of] Medical Board [Examiners]~~.

SECTION 2.02. Section 204.052, Occupations Code, is amended to read as follows:

Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician assistant board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three practicing physician assistant members who each have at least five years of clinical experience as a physician assistant;

(2) three physician members who are licensed in this state and who supervise physician assistants; and

(3) three public members who are not licensed as a physician or physician assistant.

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

SECTION 2.03. Section 204.053, Occupations Code, is amended to read as follows:

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or profession problems and in promoting their common interest.

(b) A person may not be ~~[is not eligible for appointment as]~~ a public member of the physician assistant board if the person or

the person's spouse:

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

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

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

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or physician assistant board other than compensation or reimbursement authorized by law for physician assistant board membership, attendance, or expenses [that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].

(c) ~~(b)~~ A person may not be ~~serve as~~ a member of the physician assistant board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

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

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

SECTION 2.04. Section 204.055, Occupations Code, is amended to read as follows:

Sec. 204.055. OFFICERS. The governor shall designate a member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The physician assistant board shall select from its membership a [presiding officer and a] secretary to serve a one-year term [term].

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

(a) It is a ground for removal from the physician assistant board that a member:

(1) does not have at the time of taking office [appointment] the qualifications required by Sections 204.052 and 204.053 [this subchapter for appointment to the board];

(2) does not maintain during [the] service on the physician assistant board the qualifications required by Sections 204.052 and 204.053 [this subchapter for appointment to the board]; [or]

(3) is ineligible for membership under Section 204.053;

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

(5) is absent from more than half of the regularly scheduled physician assistant board meetings that the member is eligible to attend during a calendar year without an excuse

approved by a majority vote of the board [fails to attend at least one-half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year].

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

SECTION 2.06. Subchapter B, Chapter 204, Occupations Code, is amended by adding Section 204.059 to read as follows:

Sec. 204.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the physician assistant board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the physician assistant board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the physician assistant board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the physician assistant board or the Texas Ethics Commission.

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

SECTION 2.07. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.1015 to read as follows:

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The physician assistant board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the physician assistant board submits the rule to the medical board for approval.

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

SECTION 2.08. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.105 to read as follows:

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The physician assistant board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

SECTION 2.09. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.106 to read as follows:

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the

advice and approval of the medical board, the physician assistant board shall develop and implement policies that clearly separate the policy-making responsibilities of the physician assistant board and the management responsibilities of the executive director and the staff of the medical board.

SECTION 2.10. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.107 to read as follows:

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

SECTION 2.11. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.108 to read as follows:

Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician assistant board shall maintain a system to promptly and efficiently act on complaints filed with the physician assistant board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

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

(3) information about the disposition of the complaint.

(b) The physician assistant board shall make information available describing its procedures for complaint investigation and resolution.

(c) The physician assistant board shall periodically notify the parties of the status of the complaint until final disposition of the complaint, unless the notice would jeopardize an investigation.

SECTION 2.12. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.109 to read as follows:

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

SECTION 2.13. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.110 to read as follows:

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 2.14. Section 204.152, Occupations Code, is amended to read as follows:

Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician assistant board shall issue a license to an applicant who:

- (1) meets the eligibility requirements of Section 204.153;
- (2) submits an application on a form prescribed by the board;
- (3) pays the required application fee;
- (4) certifies that the applicant is mentally and physically able to function safely as a physician assistant; and
- (5) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications.

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

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

(a) To be eligible for a license under this chapter, an applicant must:

- (1) successfully complete an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;
- (2) pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;
- (3) hold a certificate issued by the National Commission on Certification of Physician Assistants;
- (4) be of good moral character; ~~and~~
- (5) meet any other requirement established by board rule; and

(6) pass a jurisprudence examination approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a) (6) regarding:

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

SECTION 2.16. Section 204.156, Occupations Code, is amended to read as follows:

Sec. 204.156. LICENSE RENEWAL. (a) On notification from the physician assistant board, a person who holds a license under this chapter may renew the license by:

- (1) paying the required renewal fee;

(2) submitting the appropriate form; and
(3) meeting any other requirement established by board rule.

(b) The physician assistant board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the physician assistant board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the physician assistant board a fee that is equal to 1-1/2 times the renewal fee for the license.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the physician assistant board a fee equal to two times the renewal fee for the license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of the application may obtain a new license without reexamination. The person must pay to the physician assistant board a fee that is equal to two times the normally required renewal fee for the license.

SECTION 2.17. Subchapter D, Chapter 204, Occupations Code, is amended by adding Section 204.1562 to read as follows:

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

(a) The physician assistant board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The physician assistant board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the physician assistant board determines appropriate as a prerequisite to the renewal of a license under this chapter;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be approved by the physician assistant board; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) The physician assistant board may require that a specified number of continuing medical education hours be completed informally, including through self-study and self-directed education.

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

(c) A person whose license is on inactive status under this section may return the person's license to active status by:

(1) applying to the physician assistant board; ~~and~~

(2) satisfying the requirements of Section 204.156; and

(3) paying the fee established by the physician assistant board for returning a license to active status.

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

SECTION 2.19. Subchapter F, Chapter 204, Occupations Code, is amended by adding Section 204.2511 to read as follows:

Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician assistant board shall complete a preliminary investigation of a complaint filed with the physician assistant board not later than

the 30th day after the date of receiving the complaint. The physician assistant board shall first determine whether the physician assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the physician assistant board shall determine whether to officially proceed on the complaint. If the physician assistant board fails to complete the preliminary investigation in the time required by this section, the physician assistant board's official investigation of the complaint is considered to commence on that date.

SECTION 2.20. Section 204.301(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Section 204.305, on a determination that an applicant or license holder committed an act described in Section 204.302, 204.303, or 204.304, the physician assistant board by order shall take any of the following actions:

(1) deny the person's application for a license ~~[application]~~ or license renewal or revoke the person's license or other authorization;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the physician assistant board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant; or

(B) stipulating periodic physician assistant board review;

(6) assess an administrative penalty against the person under Section 204.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

SECTION 2.21. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3011 to read as follows:

Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The physician assistant board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the physician assistant board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 204.312 if:

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

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

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

SECTION 2.22. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3045 to read as follows:

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The physician assistant board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the physician assistant board 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) The physician assistant board shall refer a physician

assistant or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The physician assistant board may not require a physician assistant or applicant to submit to an examination by a physician having a specialty specified by the physician assistant board unless medically indicated. The physician assistant board may not require a physician assistant or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician assistant or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 2.23. Section 204.305, Occupations Code, is amended to read as follows:

Sec. 204.305. REHABILITATION ORDER. (a) The physician assistant board, through an agreed order or after a contested proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

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

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

(A) reported the use; ~~and~~

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

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

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

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

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

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

(d) The physician assistant board may disclose a rehabilitation order to a local or statewide private association of physician assistants only as provided by Section 204.3075.

SECTION 2.24. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3075 to read as follows:

Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

(a) If a rehabilitation order imposed under Section 204.305 requires a license holder to participate in activities or programs provided by a local or statewide private association of physician assistants, the physician assistant board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the physician assistant's rehabilitation.

(b) The physician assistant board may provide to the association any information that the board determines to be

necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the physician assistant board.

SECTION 2.25. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.312 to read as follows:

Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician assistant board by rule shall adopt procedures governing:

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

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

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

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

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

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

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

(5) the physician assistant board's legal counsel or a representative of the attorney general be present to advise the physician assistant board or the medical board's staff; and

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

(c) An affected physician assistant is entitled to:

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

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

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

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

SECTION 2.26. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.313 to read as follows:

Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 204.312, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 204.312(b)(4), an informal proceeding may be conducted by one panelist if the affected physician assistant waives the requirement that at least two panelists conduct the informal proceeding. If the physician assistant waives that requirement, the panelist may be any member of the physician assistant board.

(c) The panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the physician assistant board under Section 204.312, including a proceeding to:

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

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the physician assistant board under Section 204.312 to show compliance with an order of the physician assistant board.

SECTION 2.27. Subchapter G, Chapter 204, Occupations Code, is amended by adding Sections 204.314 and 204.3145 to read as follows:

Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A physician assistant board member that serves as a panelist at an informal meeting under Section 204.312 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

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

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

(d) The panel and medical board employees shall provide an opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the physician assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

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

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

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician assistant and the physician assistant's authorized representative. The physician assistant may accept the proposed settlement within

the time established by the panel at the informal meeting. If the physician assistant rejects the proposed settlement or does not act within the required time, the physician assistant board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The physician assistant board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 2.28. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.315 to read as follows:

Sec. 204.315. SURRENDER OF LICENSE. (a) The physician assistant board may accept the voluntary surrender of a license.

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

(c) The physician assistant board by rule shall establish guidelines for determining the competency of a former license holder to return to practice.

SECTION 2.29. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.316 to read as follows:

Sec. 204.316. REFUND. (a) Subject to Subsection (b), the physician assistant board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Section 204.351.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The physician assistant board may not require payment of other damages or estimate harm in a refund order.

SECTION 2.30. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.317 to read as follows:

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The physician assistant board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the physician assistant board makes a determination required by Section 2001.058(e), Government Code.

SECTION 2.31. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.318 to read as follows:

Sec. 204.318. EXPERT IMMUNITY. An expert who assists the physician assistant board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the physician assistant board.

SECTION 2.32. The heading to Subchapter H, Chapter 204, Occupations Code, is amended to read as follows:

SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 2.33. Subchapter H, Chapter 204, Occupations Code, is amended by adding Section 204.353 to read as follows:

Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to the physician assistant board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to physician assistant practice, the board after notice and

opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION 2.34. Section 204.004, Occupations Code, is repealed.

SECTION 2.35. (a) Not later than January 1, 2006, the Texas State Board of Physician Assistant Examiners shall:

(1) adopt the policies required by Sections 204.109 and 204.110, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 204, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Physician Assistant Examiners shall develop the jurisprudence examination required by Section 204.153, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 204.153, Occupations Code, as amended by this article, applies only to an individual who applies for a license as a physician assistant on or after September 1, 2006.

SECTION 2.36. (a) 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 Texas State Board of Physician Assistant Examiners do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) 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, apply only to a complaint filed with the Texas State Board of Physician Assistant Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Physician Assistant Examiners to issue, renew, or revoke a license under Chapter 204, Occupations Code, apply only to an application for a license filed with the Texas State Board of Physician Assistant Examiners under Chapter 204, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

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

SECTION 3.01. Sections 205.001(6), (7), and (8), Occupations Code, are amended to read as follows:

(6) "Executive director" means the executive director of the Texas Medical [State] Board [~~of Medical Examiners~~].

(7) "Medical board" means the Texas Medical [State] Board [~~of Medical Examiners~~].

(8) "Physician" means a person licensed to practice medicine by the Texas Medical [State] Board [~~of Medical Examiners~~].

SECTION 3.02. Section 205.051(a), Occupations Code, is amended to read as follows:

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

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

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

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

SECTION 3.03. Sections 205.053(a), (c), and (d), Occupations Code, are amended to read as follows:

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

(c) A person [~~who is the spouse of an officer, board member, manager, or paid consultant of a Texas trade association in the field of health care~~] may not be a member of the acupuncture board and may not be a [an employee of the] medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].

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

SECTION 3.04. Section 205.055, Occupations Code, is amended to read as follows:

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

SECTION 3.05. Section 205.057, Occupations Code, is amended to read as follows:

Sec. 205.057. TRAINING. (a) A [To be eligible to take office as a member of the acupuncture board, a] person who is appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes [must complete at least one course of] a training program that complies with this section.

(b) The training program must provide the person with

information ~~[to the person]~~ regarding:

- (1) this chapter ~~[and the acupuncture board];~~
- (2) the programs operated by the acupuncture board;
- (3) the role and functions of the acupuncture board;
- (4) the rules of the acupuncture board~~[, with an emphasis on the rules that relate to disciplinary and investigatory authority];~~
- (5) the current budget for the acupuncture board;
- (6) the results of the most recent formal audit of the acupuncture board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest ~~[the:~~
 - ~~[(A) open meetings law, Chapter 551, Government Code;~~
 - ~~[(B) open records law, Chapter 552, Government Code; and~~
 - ~~[(C) administrative procedure law, Chapter 2001, Government Code]; and~~
- (8) ~~[the requirements of the conflict of interest laws and other laws relating to public officials; and~~
 - ~~[(9)] any applicable ethics policies adopted by the acupuncture ~~[medical]~~ board or the Texas Ethics Commission.~~

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

SECTION 3.06. Section 205.101, Occupations Code, is amended to read as follows:

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

- (1) establish qualifications for an acupuncturist to practice in this state;
- (2) establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;
- (3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;
- (4) develop requirements for licensure by endorsement of other states;
- (5) prescribe the application form for a license to practice acupuncture;
- (6) recommend rules to establish licensing and other fees ~~[make recommendations on applications for licenses to practice acupuncture];~~
- (7) establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college; and
- (8) recommend additional rules as are necessary to administer and enforce this chapter.

(b) The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.

- (c) The acupuncture board shall:
- (1) review and approve or reject each application for the issuance or renewal of a license;
 - (2) issue each license; and
 - (3) deny, suspend, or revoke a license or otherwise

discipline a license holder.

SECTION 3.07. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1041 to read as follows:

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

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

SECTION 3.08. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1045 to read as follows:

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

SECTION 3.09. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.106 to read as follows:

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

SECTION 3.10. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.107 to read as follows:

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

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

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

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

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

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

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

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

SECTION 3.11. Subchapter D, Chapter 205, Occupations Code, is amended by adding Section 205.1521 to read as follows:

Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture

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

SECTION 3.12. Section 205.201, Occupations Code, is amended to read as follows:

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

SECTION 3.13. Section 205.202, Occupations Code, is amended to read as follows:

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

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

SECTION 3.14. Section 205.203, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (c-1) and (f) to read as follows:

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

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

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

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

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

SECTION 3.15. Section 205.206, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

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

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

program adequately prepares an individual for the practice of acupuncture.

SECTION 3.16. Section 205.255, Occupations Code, is amended by adding Subsections (a-1) and (c) to read as follows:

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

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

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

SECTION 3.17. Sections 205.351(b) and (c), Occupations Code, are amended to read as follows:

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

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

SECTION 3.18. Section 205.352, Occupations Code, is amended to read as follows:

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

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

- (1) deny the person's application for a license, license renewal, or certificate to practice acupuncture or revoke the person's license or certificate to practice acupuncture;
- (2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board as a condition for the issuance, continuance, or renewal of a license or certificate to practice acupuncture;
- (3) require the person to participate in a program of education or counseling prescribed by the acupuncture board;
- (4) suspend, limit, or restrict the person's license or certificate to practice acupuncture, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of acupuncture or stipulating periodic review by the acupuncture board;
- (5) require the person to practice under the direction of an acupuncturist designated by the acupuncture board for a specified period of time;
- (6) assess an administrative penalty against the person as provided by Subchapter J [~~Chapter 165~~];
- (7) require the person to perform public service considered appropriate by the acupuncture board; ~~or~~
- (8) stay enforcement of an order and place the person on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;
- (9) require the person to continue or review professional education until the person attains a degree of skill satisfactory to the acupuncture board in those areas that are the

basis of the probation under Subdivision (8);

(10) require the person to report regularly to the acupuncture board on matters that are the basis of the probation under Subdivision (8); or

(11) administer a public reprimand.

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

SECTION 3.19. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3522 to read as follows:

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

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

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

SECTION 3.20. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3523 to read as follows:

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

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical or mental health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

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

SECTION 3.21. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3541 to read as follows:

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

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

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

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

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

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

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

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

represents the public;

(5) the acupuncture board's legal counsel or a representative of the attorney general be present to advise the acupuncture board or the medical board's staff; and

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

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

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

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

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

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

SECTION 3.22. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3542 to read as follows:

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

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

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

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

(2) request modification or termination of an order.

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

SECTION 3.23. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3543 to read as follows:

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

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

(c) An acupuncture board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the

participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the acupuncture board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected acupuncturist have an opportunity to present information related to the case. During the panel's deliberation, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the acupuncture board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected acupuncturist and the acupuncturist's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the acupuncturist and representative reasonably believe could be proven by competent evidence at a formal hearing.

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

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

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

SECTION 3.24. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3544 to read as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 3.25. Section 205.356, Occupations Code, is amended to read as follows:

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

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

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

(A) reported the use; ~~and~~

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

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

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

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

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

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

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

SECTION 3.26. Subchapter H, Chapter 205, Occupations Code, is amended by adding Sections 205.3561 and 205.3562 to read as follows:

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

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 205.356 requires a license holder to participate in activities or programs provided by a local or statewide private acupuncture association, the acupuncture board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

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

SECTION 3.27. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.360 to read as follows:

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

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

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

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

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

SECTION 3.28. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.361 to read as follows:

Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding officer of the acupuncture board, with that board's approval, shall

appoint a three-member disciplinary panel consisting of acupuncture board members to determine whether a person's license to practice as an acupuncturist should be temporarily suspended.

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

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

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

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

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

SECTION 3.29. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.362 to read as follows:

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

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 205.352.

SECTION 3.30. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.363 to read as follows:

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

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order.

SECTION 3.31. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.364 to read as follows:

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code.

SECTION 3.32. Sections 205.402(a) and (d), Occupations Code, are amended to read as follows:

(a) The ~~acupuncture [medical]~~ board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

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

SECTION 3.33. The heading to Subchapter I, Chapter 205, Occupations Code, is amended to read as follows:

SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 3.34. Chapter 205, Occupations Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

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

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

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

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

(1) the seriousness of the violation, including:

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

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

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

(3) the history of previous violations;

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

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

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

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

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

(1) pay the penalty;

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

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

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

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

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

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

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

(B) giving a copy of the affidavit to the

presiding officer of the acupuncture board by certified mail.

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

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

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

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

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

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

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

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

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

SECTION 3.35. Sections 205.002 and 205.353, Occupations Code, are repealed.

SECTION 3.36. (a) Not later than January 1, 2006, the Texas State Board of Acupuncture Examiners shall:

(1) adopt the policies required by Sections 205.106 and 205.107, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 205, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Acupuncture Examiners shall develop the jurisprudence examination required by Section 205.203, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 205.203, Occupations Code, as amended by this article, applies only to an individual who applies for a license as an acupuncturist on or after September 1, 2006.

SECTION 3.37. (a) 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 Texas State Board of Acupuncture Examiners do not affect the entitlement of a member 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. The changes in law made by those sections apply only to a member appointed on or

after September 1, 2005.

(b) 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, apply only to a complaint filed with the Texas State Board of Acupuncture Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Acupuncture Examiners to issue, renew, or revoke a license under Chapter 205, Occupations Code, apply only to an application for a license filed with the Texas State Board of Acupuncture Examiners under Chapter 205, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Section 206.001(5), Occupations Code, is amended to read as follows:

(5) "Medical board" means the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~.

SECTION 4.02. Subchapter D, Chapter 206, Occupations Code, is amended by adding Section 206.1575 to read as follows:

Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board shall complete a preliminary investigation of a complaint not later than the 30th day after the date of receiving the complaint. The medical board shall first determine whether the surgical assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the medical board shall determine whether to officially proceed on the complaint. If the medical board fails to complete the preliminary investigation in the time required by this section, the medical board's official investigation is considered to commence on that date.

SECTION 4.03. Section 206.209, Occupations Code, is amended to read as follows:

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

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

SECTION 4.04. Section 206.305, Occupations Code, is amended to read as follows:

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may

impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

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

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

(A) reported the use; ~~and~~

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

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

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

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

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

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

(d) The medical board may disclose a rehabilitation order to a local or statewide private medical or surgical assistant association only as provided by Section 206.3075.

SECTION 4.05. Subchapter G, Chapter 206, Occupations Code, is amended by adding Section 206.3075 to read as follows:

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

(a) If a rehabilitation order imposed under Section 206.305 requires a license holder to participate in activities or programs provided by a local or statewide private medical or surgical assistant association, the medical board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

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

SECTION 4.06. Subchapter G, Chapter 206, Occupations Code, is amended by adding Sections 206.313-206.315 to read as follows:

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

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

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

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

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

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

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

(4) at least one of the medical board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

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

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

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

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

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

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

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

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

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

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant,

the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the medical board attorney serving as counsel to the panel may be present during the deliberations.

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

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may 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) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the medical board under Section 206.313 to show compliance with an order of the board.

SECTION 4.07. 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, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. This Act takes effect September 1, 2005.