

AN ACT

To amend sections 4725.01, 4730.11, 4762.02, 4762.03, 4762.031, 4762.04 to 4762.06, 4762.08 to 4762.11, 4762.13, 4762.131, 4762.132, 4762.15, 4762.16, and 4762.18 and to enact section 4762.22 of the Revised Code to modify the laws regarding the practice of acupuncturists, to specify the conditions that optometrists must meet when prescribing certain anti-inflammatory drugs, and to provide that certain physician assistant students are not required to obtain a master's or higher degree as a condition of being eligible to practice in Ohio.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4725.01, 4730.11, 4762.02, 4762.03, 4762.031, 4762.04, 4762.05, 4762.06, 4762.08, 4762.09, 4762.10, 4762.11, 4762.13, 4762.131, 4762.132, 4762.15, 4762.16, and 4762.18 be amended and section 4762.22 of the Revised Code be enacted to read as follows:

Sec. 4725.01. As used in this chapter:

(A)(1) The "practice of optometry" means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury.

(2) In the case of a licensed optometrist who holds a topical ocular pharmaceutical agents certificate, the "practice of optometry" has the same meaning as in division (A)(1) of this section, except that it also includes administering topical ocular pharmaceutical agents.

(3) In the case of a licensed optometrist who holds a therapeutic pharmaceutical agents certificate, the "practice of optometry" has the same meaning as in division (A)(1) of this section, except that it also includes all of the following:

(a) Employing, applying, administering, and prescribing instruments, devices, and procedures, other than invasive procedures, for purpose of examination, investigation, diagnosis, treatment, or prevention of any disease, injury, or other abnormal condition of the visual system;

(b) Employing, applying, administering, and prescribing topical ocular pharmaceutical agents;

(c) Employing, applying, administering, and prescribing therapeutic pharmaceutical agents;

(d) Assisting an individual in determining the individual's blood glucose level by using a commercially available glucose-monitoring device. Nothing in this section precludes a licensed optometrist who holds a therapeutic pharmaceutical agents certificate from using any particular type of commercially available glucose-monitoring device.

(B) "Topical ocular pharmaceutical agent" means a drug or dangerous drug that is a topical drug and used in the practice of optometry as follows:

(1) In the case of a licensed optometrist who holds a topical ocular pharmaceutical agents certificate, for evaluative purposes in the practice of optometry as set forth in division (A)(1) of this section;

(2) In the case of a licensed optometrist who holds a therapeutic pharmaceutical agents certificate, for purposes of examination, investigation, diagnosis, treatment, or prevention of any disease, injury, or other abnormal condition of the visual system.

(C) "Therapeutic pharmaceutical agent" means a drug or dangerous drug that is used for examination, investigation, diagnosis, treatment, or prevention of any disease, injury, or other abnormal condition of the visual system in the practice of optometry by a licensed optometrist who holds a therapeutic pharmaceutical agents certificate, and is any of the following:

(1) An oral drug or dangerous drug in one of the following classifications:

(a) Anti-infectives, including antibiotics, antivirals, antimicrobials, and antifungals;

(b) Anti-allergy agents;

(c) Antiglaucoma agents;

(d) Analgesics, including only analgesic drugs that are available without a prescription, analgesic drugs or dangerous drugs that require a prescription but are not controlled substances, and schedule III controlled substances authorized by the state board of optometry in rules adopted under section 4725.091 of the Revised Code;

(e) Anti-inflammatories, excluding all drugs or dangerous drugs classified as oral steroids other than methylpredisolone, ~~which, except that~~

methylpredisolone may be used under a therapeutic pharmaceutical agents certificate only if it is prescribed under all of the following conditions ~~are met~~:

- (i) ~~The drug is prescribed for~~ For use in allergy cases;
- (ii) ~~The drug is prescribed for~~ For use by an individual who is eighteen years of age or older;
- (iii) ~~The drug is prescribed on~~ On the basis of an individual's particular episode of illness;
- (iv) ~~The drug is prescribed in~~ In an amount that does not exceed the amount packaged for a single course of therapy.

(2) Epinephrine administered by injection to individuals in emergency situations to counteract anaphylaxis or anaphylactic shock. Notwithstanding any provision of this section to the contrary, administration of epinephrine in this manner does not constitute performance of an invasive procedure.

(3) An oral drug or dangerous drug that is not included under division (C)(1) of this section, if the drug or dangerous drug is approved, exempt from approval, certified, or exempt from certification by the federal food and drug administration for ophthalmic purposes and the drug or dangerous drug is specified in rules adopted by the state board of optometry under section 4725.09 of the Revised Code.

(D) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(E) "Drug" and "dangerous drug" have the same meanings as in section 4729.01 of the Revised Code.

(F) "Invasive procedure" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, administering medication by injection, or the removal of intraocular foreign bodies.

(G) "Visual system" means the human eye and its accessory or subordinate anatomical parts.

(H) "Certificate of licensure" means a certificate issued by the state board of optometry under section 4725.13 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(1) of this section.

(I) "Topical ocular pharmaceutical agents certificate" means a certificate issued by the state board of optometry under section 4725.13 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(2) of this section.

(J) "Therapeutic pharmaceutical agents certificate" means a certificate issued by the state board of optometry under division (A)(3) or (4) of section

4725.13 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(3) of this section.

Sec. 4730.11. (A) For an individual to be eligible to receive a certificate to practice as a physician assistant, all of the following apply:

(1) The applicant shall be at least eighteen years of age.

(2) The applicant shall be of good moral character.

(3) The applicant shall hold current certification by the national commission on certification of physician assistants or a successor organization that is recognized by the state medical board.

(4) Effective January 1, 2008, except as provided in division (B) of this section, the applicant shall meet one of the following educational requirements:

(a) The applicant shall hold a master's or higher degree that was obtained from a program accredited by the accreditation review commission on education for the physician assistant or a predecessor or successor organization recognized by the board;

(b) The applicant shall hold a degree other than a master's or higher degree that was obtained from a program accredited by the accreditation review commission on education for the physician assistant or a predecessor or successor organization recognized by the board and shall hold a master's or higher degree in a course of study with clinical relevance to the practice of physician assistants that was obtained from a program accredited by a regional or specialized and professional accrediting agency recognized by the council for higher education accreditation.

(B) It is not necessary for an applicant to hold a master's or higher degree as a condition of receiving a certificate to practice as a physician assistant if the applicant presents evidence satisfactory to the board of holding a either of the following:

(1) A current, valid license or other form of authority to practice as a physician assistant that was issued by another jurisdiction prior to January 1, 2008;

(2) A degree, other than a master's or higher degree, that is obtained as a result of being enrolled on January 1, 2008, in a program in this state that was accredited by the accreditation review commission on education for the physician assistant but did not grant a master's or higher degree to individuals enrolled in the program on that date, and completing the program on or before December 31, 2009.

(C) This section does not require an individual to obtain a master's or higher degree as a condition of retaining or renewing a certificate to practice as a physician assistant if ~~either~~ any of the following ~~is the case~~ apply:

(1) Prior to January 1, 2008, the individual received a certificate to practice as a physician assistant under this chapter without holding a master's or higher degree.

(2) On or after January 1, 2008, the individual received a certificate to practice as a physician assistant under this chapter on the basis of holding a license issued in another jurisdiction, as specified in division (B)(1) of this section.

(3) On or after January 1, 2008, the individual received a certificate to practice as a physician assistant under this chapter on the basis of obtaining a degree as specified in division (B)(2) of this section.

Sec. 4762.02. (A) Except as provided in division (B) of this section, no person shall engage in the practice of acupuncture unless the person holds a valid certificate ~~of registration to practice~~ as an acupuncturist issued by the state medical board under this chapter.

(B) Division (A) of this section does not apply to the following:

(1) A physician;

(2) A person who performs acupuncture as part of a training program in acupuncture, but only if both of the following conditions are met:

(a) The training program is operated by an educational institution that holds an effective certificate of authorization issued by the Ohio board of regents under section 1713.02 of the Revised Code or a school that holds an effective certificate of registration issued by the state board of career colleges and schools under section 3332.05 of the Revised Code;

(b) The person performs the acupuncture under the general supervision of an acupuncturist who holds a certificate to practice as an acupuncturist issued under this chapter and is not practicing within the supervisory period required by section 4762.10 of the Revised Code.

(3) A chiropractor who holds a certificate to practice acupuncture issued by the state chiropractic board under section 4734.283 of the Revised Code.

Sec. 4762.03. (A) An individual seeking a certificate ~~of registration to practice~~ as an acupuncturist shall file with the state medical board a written application on a form prescribed and supplied by the board. The application shall include all of the following:

(1) Evidence satisfactory to the board that the applicant is at least eighteen years of age and of good moral character;

(2) Evidence satisfactory to the board that the applicant has been designated as a diplomate in acupuncture by the national certification commission for acupuncture and oriental medicine and that the designation is current and active;

(3) Any other information the board requires.

(B) The board shall review all applications received under this section. The board shall determine whether an applicant meets the requirements to receive a certificate ~~of registration~~ to practice not later than sixty days after receiving a complete application. The affirmative vote of not fewer than six members of the board is required to determine that an applicant meets the requirements for a certificate.

(C) At the time of making application for a certificate ~~of registration~~ to practice, the applicant shall pay the board a fee of one hundred dollars, no part of which shall be returned.

Sec. 4762.031. In addition to any other eligibility requirement set forth in this chapter, each applicant for a certificate ~~of registration~~ to practice as an acupuncturist shall comply with sections 4776.01 to 4776.04 of the Revised Code. The state medical board shall not grant to an applicant a certificate ~~of registration~~ to practice as an acupuncturist unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate issued pursuant to section 4762.04 of the Revised Code.

Sec. 4762.04. If the state medical board determines under section 4762.03 of the Revised Code that an applicant meets the requirements for a certificate ~~of registration~~ to practice as an acupuncturist, the secretary of the board shall register the applicant as an acupuncturist and issue to the applicant a certificate ~~of registration~~ to practice as an acupuncturist. The certificate shall expire biennially and may be renewed in accordance with section 4762.06 of the Revised Code.

Sec. 4762.05. Upon application by the holder of a certificate ~~of registration~~ to practice as an acupuncturist, the state medical board shall issue a duplicate certificate to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The fee for a duplicate certificate is thirty-five dollars.

Sec. 4762.06. (A) A person seeking to renew a certificate ~~of registration~~ to practice as an acupuncturist shall, on or before the thirty-first day of January of each even-numbered year, apply for renewal of the certificate. The state medical board shall send renewal notices at least one month prior to the expiration date.

Applications shall be submitted to the board on forms the board shall prescribe and supply. Each application shall be accompanied by a biennial renewal fee of one hundred dollars.

The applicant shall report any criminal offense that constitutes grounds for refusing to issue a certificate ~~of registration~~ under section 4762.13 of the Revised Code to which the applicant has pleaded guilty, of which the

applicant has been found guilty, or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing an application for a certificate ~~of registration~~ to practice as an acupuncturist.

(B) To be eligible for renewal, an acupuncturist must certify to the board that the acupuncturist has maintained the acupuncturist's designation as a diplomate in acupuncture by the national certification commission for acupuncture and oriental medicine.

(C) If an applicant submits a complete renewal application and qualifies for renewal pursuant to division (B) of this section, the board shall issue to the applicant a renewed certificate ~~of registration~~ to practice as an acupuncturist.

(D) A certificate ~~of registration~~ to practice that is not renewed on or before its expiration date is automatically suspended on its expiration date. If a certificate has been suspended pursuant to this division for two years or less, the board shall reinstate the certificate upon an applicant's submission of a renewal application, the biennial renewal fee, and the applicable monetary penalty. The penalty for reinstatement is twenty-five dollars. If a certificate has been suspended pursuant to this division for more than two years, it may be restored upon an applicant's submission of a restoration application, the biennial registration fee, and the applicable monetary penalty and compliance with sections 4776.01 to 4776.04 of the Revised Code. The board shall not restore a certificate to practice unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate issued pursuant to section 4762.04 of the Revised Code. The penalty for restoration is fifty dollars.

Sec. 4762.08. A person who holds a certificate ~~of registration~~ to practice as an acupuncturist issued under this chapter may use the following titles, initials, or abbreviations, or the equivalent of such titles, initials, or abbreviations, to identify the person as an acupuncturist: "Acupuncturist," "Registered Licensed Acupuncturist," "R. Ae.," "Reg. Ae.," "Certified Acupuncturist," "C.A.," "C. Ae.," "L.Ac.," "Diplomate of Acupuncture (NCCAOM)," "Dipl. Ac. (NCCAOM)," or "National Board Certified in Acupuncture (NCCAOM)." The person shall not use other titles, initials, or abbreviations in conjunction with the person's practice of acupuncture, including the title "doctor."

Sec. 4762.09. An acupuncturist who holds a certificate ~~of registration~~ to practice issued under this chapter shall conspicuously display at the acupuncturist's primary place of business both of the following:

(A) The acupuncturist's certificate ~~of registration~~, as evidence that the acupuncturist is authorized to practice acupuncture in this state;

(B) A notice specifying that the practice of acupuncture under the certificate of registration is regulated by the state medical board and the address and telephone number of the board's office.

Sec. 4762.10. ~~All~~ (A) As used in this section, "disciplinary action" means an action taken by the state medical board pursuant to section 4762.13 of the Revised Code.

(B) The practice of an acupuncturist is subject to a supervisory period if either of the following applies:

(1) Except as otherwise provided in division (B)(1) of this section, if an acupuncturist practicing on the effective date of this amendment has practiced for less than one year and is not subject to any disciplinary action, supervision shall be for a period beginning on the effective date of this amendment and ending when the acupuncturist has practiced for one year from the date the initial certificate was granted. If the acupuncturist is subject to disciplinary action during that period, the supervision shall continue until the acupuncturist has not been subject to any disciplinary action for one year.

(2) Except as otherwise provided in division (B)(2) of this section, if an acupuncturist is granted an initial certificate to practice on or after the effective date of this amendment, the supervisory period shall begin on the date the certificate is granted and end one year thereafter. If the acupuncturist is subject to disciplinary action during that year, the supervision shall continue until the acupuncturist has not been subject to any disciplinary action for one year.

(C) During an acupuncturist's supervisory period, both of the following apply to the acupuncturist's practice of a person who holds a certificate of registration as an acupuncturist issued under this chapter in addition to the requirements of division (E) of this section:

~~(A)~~(1) The acupuncturist shall perform acupuncture for a patient only if the patient has received a written referral or prescription for acupuncture from a physician or chiropractor. As specified in the referral or prescription, the acupuncturist shall provide reports to the physician or chiropractor on the patient's condition or progress in treatment and comply with the conditions or restrictions on the acupuncturist's course of treatment.

~~(B)~~(2) The acupuncturist shall perform acupuncture under the general supervision of the patient's referring or prescribing physician or chiropractor. General supervision does not require that the acupuncturist and physician or chiropractor practice in the same office.

~~(C)~~(D) After an acupuncturist's supervisory period has ended, both of the following apply to the acupuncturist's practice in addition to the

applicable requirements of division (E) of this section:

(1) Before treating a patient for a particular condition, the acupuncturist shall confirm whether the patient has undergone within the past six months a diagnostic examination that was related to the condition for which the patient is seeking acupuncture and was performed by a physician or chiropractor acting within the physician or chiropractor's scope of practice. Confirmation that the diagnostic examination was performed may be made by obtaining from the patient a signed form stating that the patient has undergone the examination.

(2) If the patient does not provide the signed form specified in division (D)(1) of this section or the acupuncturist otherwise determines that the patient has not undergone the diagnostic examination specified in that division, the acupuncturist shall provide to the patient a written recommendation to undergo a diagnostic examination by a physician or chiropractor.

(E) In the practice of acupuncture pursuant to a certificate to practice issued under this chapter, all of the following apply:

(1) Prior to treating a patient, the acupuncturist shall advise the patient that acupuncture is not a substitute for conventional medical diagnosis and treatment.

~~(D)~~(2) On initially meeting a patient in person, the acupuncturist shall provide in writing the acupuncturist's name, business address, and business telephone number, and information on acupuncture, including the techniques that are used.

~~(E)~~(3) While treating a patient, the acupuncturist shall not make a diagnosis. If a patient's condition is not improving or a patient requires emergency medical treatment, the acupuncturist shall consult promptly with a physician.

~~(F) An~~ (4) The acupuncturist shall maintain records for each patient treated. In each patient's records, the acupuncturist shall include the written referral or prescription pursuant to which the acupuncturist is treating the patient. The records shall be confidential and shall be retained for not less than three years following termination of treatment.

During an acupuncturist's supervisory period, the acupuncturist shall include in a patient's records the written referral or prescription pursuant to which the acupuncturist is treating the patient.

Sec. 4762.11. All of the following apply to an acupuncturist's supervising a physician or chiropractor for a patient supervising an acupuncturist during the acupuncturist's supervisory period required by section 4762.10 of the Revised Code:

(A) Before making the referral or prescription for acupuncture, the physician shall perform a medical diagnostic examination of the patient or review the results of a medical diagnostic examination recently performed by another physician, or, in the case of a chiropractor, the chiropractor shall perform a chiropractic diagnostic examination of the patient or review the results of a chiropractic diagnostic examination recently performed by another chiropractor.

(B) The physician or chiropractor shall make the referral or prescription in writing and specify in the referral or prescription all of the following:

(1) The physician's or chiropractor's diagnosis of the ailment or condition that is to be treated by acupuncture;

(2) A time by which or the intervals at which the acupuncturist must provide reports to the physician or chiropractor regarding the patient's condition or progress in treatment;

(3) The conditions or restrictions placed in accordance with division (C) of this section on the acupuncturist's course of treatment.

(C) The physician shall place conditions or restrictions on the acupuncturist's course of treatment in compliance with accepted or prevailing standards of medical care, or, in the case of a chiropractor, the chiropractor shall place conditions or restrictions on the acupuncturist's course of treatment in compliance with accepted or prevailing standards of chiropractic care.

(D) The physician or chiropractor shall be personally available for consultation with the acupuncturist. If the physician or chiropractor is not on the premises at which acupuncture is performed, the physician or chiropractor shall be readily available to the acupuncturist through some means of telecommunication and be in a location that under normal circumstances is not more than sixty minutes travel time away from the location where the acupuncturist is practicing.

Sec. 4762.13. (A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a certificate of ~~registration to practice~~ as an acupuncturist to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the certificate.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate of ~~registration to practice~~ as an acupuncturist, refuse to issue a certificate to an applicant, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of the following reasons:

(1) Permitting the holder's name or certificate to be used by another person;

(2) Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;

(3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board;

(4) A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established;

(5) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;

(6) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;

(7) Willfully betraying a professional confidence;

(8) Making a false, fraudulent, deceptive, or misleading statement in soliciting or advertising for patients or in securing or attempting to secure a certificate of registration to practice as an acupuncturist.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(9) Representing, with the purpose of obtaining compensation or other advantage personally or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(10) The obtaining of, or attempting to obtain, money or a thing of value by fraudulent misrepresentations in the course of practice;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(12) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(14) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(15) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(16) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(17) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking in drugs;

(18) Any of the following actions taken by the state agency responsible for regulating the practice of acupuncture in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(19) Violation of the conditions placed by the board on a certificate of registration to practice as an acupuncturist;

(20) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(21) Failure to cooperate in an investigation conducted by the board under section 4762.14 of the Revised Code, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(22) Failure to comply with the standards of the national certification commission for acupuncture and oriental medicine regarding professional ethics, commitment to patients, commitment to the profession, and commitment to the public;

(23) Failure to have adequate professional liability insurance coverage in accordance with section 4762.22 of the Revised Code.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119.

of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an acupuncturist or applicant to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

(D) For purposes of divisions (B)(12), (15), and (16) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the applicant or certificate holder committed the act in question. The board shall have no jurisdiction under these divisions in cases where the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under these divisions in cases where the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under the provisions of this section or upon the board's jurisdiction to take action under the provisions of this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F) For purposes of this division, any individual who holds a certificate ~~of registration to practice~~ issued under this chapter, or applies for a certificate ~~of registration to practice~~, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(1) In enforcing division (B)(5) of this section, the board, upon a showing of a possible violation, may compel any individual who holds a certificate ~~of registration to practice~~ issued under this chapter or who has applied for a certificate ~~of registration~~ pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the

board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an acupuncturist unable to practice because of the reasons set forth in division (B)(5) of this section, the board shall require the acupuncturist to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for an initial, continued, reinstated, or renewed certificate ~~of registration~~ to practice. An individual affected by this division shall be afforded an opportunity to demonstrate to the board the ability to resume practicing in compliance with acceptable and prevailing standards of care.

(2) For purposes of division (B)(6) of this section, if the board has reason to believe that any individual who holds a certificate ~~of registration~~ to practice issued under this chapter or any applicant for a certificate ~~of registration~~ suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician qualified to conduct such examination and chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for an initial, continued, reinstated, or renewed certificate ~~of registration~~, to submit to treatment.

Before being eligible to apply for reinstatement of a certificate suspended under this division, the acupuncturist shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care. The demonstration shall include the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of

practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for their determination.

The board may reinstate a certificate suspended under this division after such demonstration and after the individual has entered into a written consent agreement.

When the impaired acupuncturist resumes practice, the board shall require continued monitoring of the acupuncturist. The monitoring shall include monitoring of compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of falsification stating whether the acupuncturist has maintained sobriety.

(G) If the secretary and supervising member determine that there is clear and convincing evidence that an acupuncturist has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate ~~of registration~~ to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.

The board, upon review of the allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the acupuncturist requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the acupuncturist requests the hearing, unless otherwise agreed to by both the board and the certificate holder.

A summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. Failure to issue the order within

sixty days shall result in dissolution of the summary suspension order, but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(11), (13), or (14) of this section, and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition and supporting court documents, the board shall reinstate the certificate ~~of registration to practice~~. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of opportunity for hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act, or if no hearing is requested, it may order any of the sanctions specified in division (B) of this section.

(I) The certificate ~~of registration to practice~~ of an acupuncturist and the acupuncturist's practice in this state are automatically suspended as of the date the acupuncturist pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after the suspension shall be considered practicing without a certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose certificate is suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's certificate ~~of registration to practice~~.

(J) In any instance in which the board is required by Chapter 119. of the Revised Code to give notice of opportunity for hearing and the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In the final order, the board may order any of the sanctions identified under division (A) or (B)

of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension shall be accompanied by a written statement of the conditions under which the acupuncturist's certificate to practice may be reinstated. The board shall adopt rules in accordance with Chapter 119. of the Revised Code governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant a certificate ~~of registration~~ to practice as an acupuncturist to an applicant, revokes an individual's certificate ~~of registration~~, refuses to renew a certificate ~~of registration~~, or refuses to reinstate an individual's certificate ~~of registration~~, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate ~~of registration~~ to practice as an acupuncturist and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a certificate ~~of registration~~ to practice as an acupuncturist issued under this chapter is not effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application made under this chapter for a certificate ~~of registration~~ may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a certificate ~~of registration~~ in accordance with section 4762.06 of the Revised Code shall not remove or limit the board's jurisdiction to take disciplinary action under this section against the individual.

Sec. 4762.131. On receipt of a notice pursuant to section 2301.373 of the Revised Code, the state medical board shall comply with that section with respect to a certificate ~~of registration~~ to practice as an acupuncturist issued pursuant to this chapter.

Sec. 4762.132. If the state medical board has reason to believe that any person who has been granted a ~~certificate~~ under this chapter a certificate to practice as an acupuncturist is mentally ill or mentally incompetent, it may file in the probate court of the county in which the person has a legal residence an affidavit in the form prescribed in section 5122.11 of the

Revised Code and signed by the board secretary or a member of the board secretary's staff, whereupon the same proceedings shall be had as provided in Chapter 5122. of the Revised Code. The attorney general may represent the board in any proceeding commenced under this section.

If any person who has been granted a certificate is adjudged by a probate court to be mentally ill or mentally incompetent, the person's certificate shall be automatically suspended until the person has filed with the state medical board a certified copy of an adjudication by a probate court of the person's subsequent restoration to competency or has submitted to the board proof, satisfactory to the board, that the person has been discharged as having a restoration to competency in the manner and form provided in section 5122.38 of the Revised Code. The judge of the probate court shall forthwith notify the state medical board of an adjudication of mental illness or mental incompetence, and shall note any suspension of a certificate in the margin of the court's record of such certificate.

Sec. 4762.15. (A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B) Whenever any person holding a valid certificate to practice as an acupuncturist issued pursuant to this chapter pleads guilty to, is subject to a judicial finding of guilt of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction for a violation of Chapter 2907., 2925., or 3719. of the Revised Code or of any substantively comparable ordinance of a municipal corporation in connection with the person's practice, the prosecutor in the case, on forms prescribed and provided by the state medical board, shall promptly notify the board of the conviction. Within thirty days of receipt of that information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the certificate under section 4762.13 of the Revised Code.

(C) The prosecutor in any case against any person holding a valid certificate to practice issued pursuant to this chapter, on forms prescribed and provided by the state medical board, shall notify the board of any of the following:

(1) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a felony, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a felony charge;

(2) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor committed in the course of practice, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a

misdemeanor, if the alleged act was committed in the course of practice;

(3) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor involving moral turpitude, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a misdemeanor involving moral turpitude.

The report shall include the name and address of the certificate holder, the nature of the offense for which the action was taken, and the certified court documents recording the action.

Sec. 4762.16. (A) Within sixty days after the imposition of any formal disciplinary action taken by any health care facility, including a hospital, health care facility operated by ~~an~~ a health insuring corporation, ambulatory surgical center, or similar facility, against any individual holding a valid certificate ~~of registration to practice~~ as an acupuncturist, the chief administrator or executive officer of the facility shall report to the state medical board the name of the individual, the action taken by the facility, and a summary of the underlying facts leading to the action taken. Upon request, the board shall be provided certified copies of the patient records that were the basis for the facility's action. Prior to release to the board, the summary shall be approved by the peer review committee that reviewed the case or by the governing board of the facility.

The filing of a report with the board or decision not to file a report, investigation by the board, or any disciplinary action taken by the board, does not preclude a health care facility from taking disciplinary action against an acupuncturist.

In the absence of fraud or bad faith, no individual or entity that provides patient records to the board shall be liable in damages to any person as a result of providing the records.

(B) An acupuncturist, professional association or society of acupuncturists, physician, or professional association or society of physicians that believes a violation of any provision of this chapter, Chapter 4731. of the Revised Code, or rule of the board has occurred shall report to the board the information upon which the belief is based. This division does not require any treatment provider approved by the board under section 4731.25 of the Revised Code or any employee, agent, or representative of such a provider to make reports with respect to an acupuncturist participating in treatment or aftercare for substance abuse as long as the acupuncturist maintains participation in accordance with the requirements of section 4731.25 of the Revised Code and the treatment provider or employee, agent, or representative of the provider has no reason to believe

that the acupuncturist has violated any provision of this chapter or rule adopted under it, other than being impaired by alcohol, drugs, or other substances. This division does not require reporting by any member of an impaired practitioner committee established by a health care facility or by any representative or agent of a committee or program sponsored by a professional association or society of acupuncturists to provide peer assistance to acupuncturists with substance abuse problems with respect to an acupuncturist who has been referred for examination to a treatment program approved by the board under section 4731.25 of the Revised Code if the acupuncturist cooperates with the referral for examination and with any determination that the acupuncturist should enter treatment and as long as the committee member, representative, or agent has no reason to believe that the acupuncturist has ceased to participate in the treatment program in accordance with section 4731.25 of the Revised Code or has violated any provision of this chapter or rule adopted under it, other than being impaired by alcohol, drugs, or other substances.

(C) Any professional association or society composed primarily of acupuncturists that suspends or revokes an individual's membership for violations of professional ethics, or for reasons of professional incompetence or professional malpractice, within sixty days after a final decision, shall report to the board, on forms prescribed and provided by the board, the name of the individual, the action taken by the professional organization, and a summary of the underlying facts leading to the action taken.

The filing of a report with the board or decision not to file a report, investigation by the board, or any disciplinary action taken by the board, does not preclude a professional organization from taking disciplinary action against an acupuncturist.

(D) Any insurer providing professional liability insurance to any person holding a valid certificate ~~of registration to practice~~ as an acupuncturist or any other entity that seeks to indemnify the professional liability of an acupuncturist shall notify the board within thirty days after the final disposition of any written claim for damages where such disposition results in a payment exceeding twenty-five thousand dollars. The notice shall contain the following information:

- (1) The name and address of the person submitting the notification;
- (2) The name and address of the insured who is the subject of the claim;
- (3) The name of the person filing the written claim;
- (4) The date of final disposition;
- (5) If applicable, the identity of the court in which the final disposition

of the claim took place.

(E) The board may investigate possible violations of this chapter or the rules adopted under it that are brought to its attention as a result of the reporting requirements of this section, except that the board shall conduct an investigation if a possible violation involves repeated malpractice. As used in this division, "repeated malpractice" means three or more claims for malpractice within the previous five-year period, each resulting in a judgment or settlement in excess of twenty-five thousand dollars in favor of the claimant, and each involving negligent conduct by the acupuncturist.

(F) All summaries, reports, and records received and maintained by the board pursuant to this section shall be held in confidence and shall not be subject to discovery or introduction in evidence in any federal or state civil action involving an acupuncturist, supervising physician, or health care facility arising out of matters that are the subject of the reporting required by this section. The board may use the information obtained only as the basis for an investigation, as evidence in a disciplinary hearing against an acupuncturist or supervising physician, or in any subsequent trial or appeal of a board action or order.

The board may disclose the summaries and reports it receives under this section only to health care facility committees within or outside this state that are involved in credentialing or recredentialing an acupuncturist or supervising physician or reviewing their privilege to practice within a particular facility. The board shall indicate whether or not the information has been verified. Information transmitted by the board shall be subject to the same confidentiality provisions as when maintained by the board.

(G) Except for reports filed by an individual pursuant to division (B) of this section, the board shall send a copy of any reports or summaries it receives pursuant to this section to the acupuncturist. The acupuncturist shall have the right to file a statement with the board concerning the correctness or relevance of the information. The statement shall at all times accompany that part of the record in contention.

(H) An individual or entity that reports to the board or refers an impaired acupuncturist to a treatment provider approved by the board under section 4731.25 of the Revised Code shall not be subject to suit for civil damages as a result of the report, referral, or provision of the information.

(I) In the absence of fraud or bad faith, a professional association or society of acupuncturists that sponsors a committee or program to provide peer assistance to an acupuncturist with substance abuse problems, a representative or agent of such a committee or program, and a member of the state medical board shall not be held liable in damages to any person by

reason of actions taken to refer an acupuncturist to a treatment provider approved under section 4731.25 of the Revised Code for examination or treatment.

Sec. 4762.18. (A) Subject to division (E) of this section, the attorney general, the prosecuting attorney of any county in which the offense was committed or the offender resides, the state medical board, or any other person having knowledge of a person engaged either directly or by complicity in the practice of acupuncture without having first obtained a certificate of registration to do so pursuant to this chapter, may, in accord with provisions of the Revised Code governing injunctions, maintain an action in the name of the state to enjoin any person from engaging either directly or by complicity in the unlawful practice of acupuncture by applying for an injunction in any court of competent jurisdiction.

(B) Prior to application for an injunction under division (A) of this section, the secretary of the state medical board shall notify the person allegedly engaged either directly or by complicity in the unlawful practice of acupuncture by registered mail that the secretary has received information indicating that this person is so engaged. The person shall answer the secretary within thirty days showing that the person is either properly licensed for the stated activity or that the person is not in violation of this chapter. If the answer is not forthcoming within thirty days after notice by the secretary, the secretary shall request that the attorney general, the prosecuting attorney of the county in which the offense was committed or the offender resides, or the state medical board proceed as authorized in this section.

(C) Upon the filing of a verified petition in court, the court shall conduct a hearing on the petition and shall give the same preference to this proceeding as is given all proceedings under Chapter 119. of the Revised Code, irrespective of the position of the proceeding on the calendar of the court.

(D) Injunction proceedings as authorized by this section shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.

(E) An injunction proceeding permitted by division (A) of this section may not be maintained against a person described in division (B) of section 4762.02 of the Revised Code or a chiropractor who holds a valid certificate to practice acupuncture issued under section 4734.283 of the Revised Code.

Sec. 4762.22. An acupuncturist who holds a certificate to practice issued under this chapter shall have professional liability insurance coverage in an amount that is not less than five hundred thousand dollars.

SECTION 2. That existing sections 4725.01, 4730.11, 4762.02, 4762.03, 4762.031, 4762.04, 4762.05, 4762.06, 4762.08, 4762.09, 4762.10, 4762.11, 4762.13, 4762.131, 4762.132, 4762.15, 4762.16, and 4762.18 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 245

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____