

As Introduced

**127th General Assembly
Regular Session
2007-2008**

S. B. No. 245

Senator Schuring

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A B I L L

To amend sections 4762.02 to 4762.06, 4762.08 to 1
4762.11, 4762.13, 4762.131, 4762.132, 4762.14 to 2
4762.16, and 4762.18 and to enact section 4762.22 3
of the Revised Code to modify the laws regarding 4
the practice of acupuncturists. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4762.02, 4762.03, 4762.04, 4762.05, 6
4762.06, 4762.08, 4762.09, 4762.10, 4762.11, 4762.13, 4762.131, 7
4762.132, 4762.14, 4762.15, 4762.16, and 4762.18 be amended and 8
section 4762.22 of the Revised Code be enacted to read as follows: 9

Sec. 4762.02. (A) Except as provided in division (B) of this 10
section, no person shall engage in the practice of acupuncture 11
unless the person holds a valid ~~certificate of registration~~ 12
license as an acupuncturist issued by the state medical board 13
under this chapter. 14

(B) Division (A) of this section does not apply to the 15
following: 16

(1) A physician; 17

(2) A person who ~~performs~~ meets both of the following 18
requirements: 19

(a) Performs acupuncture as part of a training program in 20
acupuncture operated by an educational institution that holds an 21
effective certificate of authorization issued by the Ohio board of 22
regents under section 1713.02 of the Revised Code or a school that 23
holds an effective certificate of registration issued by the state 24
board of career colleges and schools under section 3332.05 of the 25
Revised Code; 26

(b) Performs the acupuncture under the general supervision of 27
an acupuncturist who has held a license under this chapter for not 28
less than twelve months; 29

(3) A chiropractor who holds a certificate to practice 30
acupuncture issued by the state chiropractic board under section 31
4734.283 of the Revised Code. 32

Sec. 4762.03. (A) An individual seeking a ~~certificate of~~ 33
~~registration~~ license as an acupuncturist shall file with the state 34
medical board a written application on a form prescribed and 35
supplied by the board. The application shall include all of the 36
following: 37

(1) Evidence satisfactory to the board that the applicant is 38
at least eighteen years of age and of good moral character; 39

(2) Evidence satisfactory to the board that the applicant has 40
been designated as a diplomate in acupuncture or oriental medicine 41
by the national certification commission for acupuncture and 42
oriental medicine and that the designation is current and active; 43

(3) Any other information the board requires. 44

(B) The board shall review all applications received under 45
this section. The board shall determine whether an applicant meets 46
the requirements to receive a ~~certificate of registration~~ license 47
not later than sixty days after receiving a complete application. 48
The affirmative vote of not fewer than six members of the board is 49

required to determine that an applicant meets the requirements for 50
a ~~certificate~~ license. 51

(C) At the time of making application for a ~~certificate of~~ 52
~~registration~~ license, the applicant shall pay the board a fee of 53
one hundred dollars, no part of which shall be returned. 54

Sec. 4762.04. If the state medical board determines under 55
section 4762.03 of the Revised Code that an applicant meets the 56
requirements for a ~~certificate of registration~~ license as an 57
acupuncturist, the secretary of the board shall register the 58
applicant as an acupuncturist and issue to the applicant a 59
~~certificate of registration~~ license as an acupuncturist. The 60
~~certificate~~ license shall expire biennially and may be renewed in 61
accordance with section 4762.06 of the Revised Code. 62

Sec. 4762.05. Upon application by the holder of a ~~certificate~~ 63
~~of registration~~ license as an acupuncturist, the state medical 64
board shall issue a duplicate ~~certificate~~ license to replace one 65
that is missing or damaged, to reflect a name change, or for any 66
other reasonable cause. The fee for a duplicate ~~certificate~~ 67
license is thirty-five dollars. 68

Sec. 4762.06. (A) A person seeking to renew a ~~certificate of~~ 69
~~registration~~ license as an acupuncturist shall, on or before the 70
thirty-first day of January of each even-numbered year, apply for 71
renewal of the ~~certificate~~ license. The state medical board shall 72
send renewal notices at least one month prior to the expiration 73
date. 74

Applications shall be submitted to the board on forms the 75
board shall prescribe and supply. Each application shall be 76
accompanied by a biennial renewal fee of one hundred dollars. 77

The applicant shall report any criminal offense that 78

constitutes grounds for refusing to issue a ~~certificate of~~ 79
~~registration~~ license under section 4762.13 of the Revised Code to 80
which the applicant has pleaded guilty, of which the applicant has 81
been found guilty, or for which the applicant has been found 82
eligible for intervention in lieu of conviction, since last 83
signing an application for a ~~certificate of registration~~ license 84
as an acupuncturist. 85

(B) To be eligible for renewal, an acupuncturist must certify 86
to the board that the acupuncturist has maintained the 87
acupuncturist's designation as a diplomate in acupuncture or 88
oriental medicine by the national certification commission for 89
acupuncture and oriental medicine. 90

(C) If an applicant submits a complete renewal application 91
and qualifies for renewal pursuant to division (B) of this 92
section, the board shall issue to the applicant a renewed 93
~~certificate of registration~~ license as an acupuncturist. 94

(D) A ~~certificate of registration~~ license that is not renewed 95
on or before its expiration date is automatically suspended on its 96
expiration date. The board shall reinstate a ~~certificate~~ license 97
suspended for failure to renew upon an applicant's submission of 98
the biennial renewal fee and the applicable monetary penalty. The 99
penalty for reinstatement is twenty-five dollars if the 100
~~certificate~~ license has been suspended for two years or less and 101
fifty dollars if the ~~certificate~~ license has been suspended for 102
more than two years. 103

Sec. 4762.08. A person who holds a ~~certificate of~~ 104
~~registration~~ license as an acupuncturist issued under this chapter 105
may use the following titles, initials, or abbreviations, or the 106
equivalent of such titles, initials, or abbreviations, to identify 107
the person as an acupuncturist: "Acupuncturist," "Registered 108
Licensed Acupuncturist," "~~R. Ac.~~," "~~Reg. Ac.~~," "~~Certified~~ 109

Acupuncturist," "C.A.," "C. Ac.," "L.Ac.," "Diplomate of 110
Acupuncture (NCCAOM)," "Dipl. Ac. (NCCAOM)," or "National Board 111
Certified in Acupuncture (NCCAOM)." The person shall not use other 112
titles, initials, or abbreviations in conjunction with the 113
person's practice of acupuncture, including the title "doctor." 114

Sec. 4762.09. An acupuncturist who holds a ~~certificate of~~ 115
~~registration~~ license issued under this chapter shall conspicuously 116
display at the acupuncturist's primary place of business both of 117
the following: 118

(A) The acupuncturist's ~~certificate of registration~~ license, 119
as evidence that the acupuncturist is authorized to practice 120
acupuncture in this state; 121

(B) A notice specifying that the practice of acupuncture 122
under the ~~certificate of registration~~ license is regulated by the 123
state medical board and the address and telephone number of the 124
board's office. 125

Sec. 4762.10. ~~All~~ (A) If a person licensed under this chapter 126
has held the license for less than twelve months, both of the 127
following apply to the acupuncturist's practice ~~of a person who~~ 128
~~holds a certificate of registration as an acupuncturist issued~~ 129
~~under this chapter~~ in addition to the requirements of division (C) 130
of this section: 131

~~(A)~~(1) The acupuncturist shall perform acupuncture for a 132
patient only if the patient has received a written referral or 133
prescription for acupuncture from a physician or chiropractor. As 134
specified in the referral or prescription, the acupuncturist shall 135
provide reports to the physician or chiropractor on the patient's 136
condition or progress in treatment and comply with the conditions 137
or restrictions on the acupuncturist's course of treatment. 138

~~(B)~~(2) The acupuncturist shall perform acupuncture under the 139

general supervision of the patient's referring or prescribing 140
physician or chiropractor. General supervision does not require 141
that the acupuncturist and physician or chiropractor practice in 142
the same office. 143

~~(C)~~(B) If a person licensed under this chapter has held the 144
license for twelve months or longer, both of the following apply 145
to the acupuncturist's practice in addition to the applicable 146
requirements of division (C) of this section: 147

(1) Before performing acupuncture on a patient, the 148
acupuncturist shall confirm that the patient has undergone a 149
diagnostic examination within the past twelve months by a 150
physician or chiropractor acting within the physician or 151
chiropractor's scope of practice by obtaining from the patient a 152
signed form stating that the patient has undergone the 153
examination. 154

(2) If the patient does not provide the signed form specified 155
in division (B)(1) of this section, the acupuncturist shall 156
provide to the patient a written recommendation to undergo a 157
diagnostic examination by a physician or chiropractor. The 158
recommendation shall be provided on a form prescribed by the state 159
medical board. 160

(C) In the practice of acupuncture pursuant to a license 161
issued under this chapter, all of the following apply: 162

(1) Prior to treating a patient, the acupuncturist shall 163
advise the patient that acupuncture is not a substitute for 164
conventional medical diagnosis and treatment. 165

~~(D)~~(2) On initially meeting a patient in person, the 166
acupuncturist shall provide in writing the acupuncturist's name, 167
business address, and business telephone number, and information 168
on acupuncture, including the techniques that are used. 169

~~(E)~~(3) While treating a patient, the acupuncturist shall not 170

make a diagnosis. If a patient's condition is not improving or a 171
patient requires emergency medical treatment, the acupuncturist 172
shall consult promptly with a physician. 173

~~(F) An (4) The acupuncturist shall maintain records for each 174
patient treated. In each patient's records, the acupuncturist 175
shall include the written referral or prescription pursuant to 176
which the acupuncturist is treating the patient. The records shall 177
be confidential and shall be retained for not less than three 178
years following termination of treatment. 179~~

In the case of an acupuncturist who has held a license under 180
this chapter for less than twelve months, the acupuncturist shall 181
include in a patient's records the written referral or 182
prescription pursuant to which the acupuncturist is treating the 183
patient. 184

Sec. 4762.11. All of the following apply to an 185
~~acupuncturist's supervising a physician or chiropractor for a 186
patient supervising an acupuncturist who has been licensed under 187
this chapter for less than twelve months: 188~~

(A) Before making the referral or prescription for 189
acupuncture, the physician shall perform a medical diagnostic 190
examination of the patient or review the results of a medical 191
diagnostic examination recently performed by another physician, 192
or, in the case of a chiropractor, the chiropractor shall perform 193
a chiropractic diagnostic examination of the patient or review the 194
results of a chiropractic diagnostic examination recently 195
performed by another chiropractor. 196

(B) The physician or chiropractor shall make the referral or 197
prescription in writing and specify in the referral or 198
prescription all of the following: 199

(1) The physician's or chiropractor's diagnosis of the 200

ailment or condition that is to be treated by acupuncture; 201

(2) A time by which or the intervals at which the 202
acupuncturist must provide reports to the physician or 203
chiropractor regarding the patient's condition or progress in 204
treatment; 205

(3) The conditions or restrictions placed in accordance with 206
division (C) of this section on the acupuncturist's course of 207
treatment. 208

(C) The physician shall place conditions or restrictions on 209
the acupuncturist's course of treatment in compliance with 210
accepted or prevailing standards of medical care, or, in the case 211
of a chiropractor, the chiropractor shall place conditions or 212
restrictions on the acupuncturist's course of treatment in 213
compliance with accepted or prevailing standards of chiropractic 214
care. 215

(D) The physician or chiropractor shall be personally 216
available for consultation with the acupuncturist. If the 217
physician or chiropractor is not on the premises at which 218
acupuncture is performed, the physician or chiropractor shall be 219
readily available to the acupuncturist through some means of 220
telecommunication and be in a location that under normal 221
circumstances is not more than sixty minutes travel time away from 222
the location where the acupuncturist is practicing. 223

Sec. 4762.13. (A) The state medical board, by an affirmative 224
vote of not fewer than six members, may revoke or may refuse to 225
grant a ~~certificate of registration~~ license as an acupuncturist to 226
a person found by the board to have committed fraud, 227
misrepresentation, or deception in applying for or securing the 228
~~certificate~~ license. 229

(B) The board, by an affirmative vote of not fewer than six 230

members, shall, to the extent permitted by law, limit, revoke, or 231
suspend an individual's ~~certificate of registration~~ license as an 232
acupuncturist, refuse to issue a ~~certificate~~ license to an 233
applicant, refuse to reinstate a ~~certificate~~ license, or reprimand 234
or place on probation the holder of a ~~certificate~~ license for any 235
of the following reasons: 236

(1) Permitting the holder's name or ~~certificate~~ license to be 237
used by another person; 238

(2) Failure to comply with the requirements of this chapter, 239
Chapter 4731. of the Revised Code, or any rules adopted by the 240
board; 241

(3) Violating or attempting to violate, directly or 242
indirectly, or assisting in or abetting the violation of, or 243
conspiring to violate, any provision of this chapter, Chapter 244
4731. of the Revised Code, or the rules adopted by the board; 245

(4) A departure from, or failure to conform to, minimal 246
standards of care of similar practitioners under the same or 247
similar circumstances whether or not actual injury to the patient 248
is established; 249

(5) Inability to practice according to acceptable and 250
prevailing standards of care by reason of mental illness or 251
physical illness, including physical deterioration that adversely 252
affects cognitive, motor, or perceptive skills; 253

(6) Impairment of ability to practice according to acceptable 254
and prevailing standards of care because of habitual or excessive 255
use or abuse of drugs, alcohol, or other substances that impair 256
ability to practice; 257

(7) Willfully betraying a professional confidence; 258

(8) Making a false, fraudulent, deceptive, or misleading 259
statement in soliciting or advertising for patients or in securing 260

or attempting to secure a ~~certificate of registration~~ license to practice as an acupuncturist. 261
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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. 263
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(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; 271
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(10) The obtaining of, or attempting to obtain, money or a thing of value by fraudulent misrepresentations in the course of practice; 275
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(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; 278
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(12) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed; 281
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(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; 284
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(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; 287
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(15) Commission of an act in the course of practice that 290

constitutes a misdemeanor in this state, regardless of the	291
jurisdiction in which the act was committed;	292
(16) Commission of an act involving moral turpitude that	293
constitutes a misdemeanor in this state, regardless of the	294
jurisdiction in which the act was committed;	295
(17) A plea of guilty to, a judicial finding of guilt of, or	296
a judicial finding of eligibility for intervention in lieu of	297
conviction for violating any state or federal law regulating the	298
possession, distribution, or use of any drug, including	299
trafficking in drugs;	300
(18) Any of the following actions taken by the state agency	301
responsible for regulating the practice of acupuncture in another	302
jurisdiction, for any reason other than the nonpayment of fees:	303
the limitation, revocation, or suspension of an individual's	304
license to practice; acceptance of an individual's license	305
surrender; denial of a license; refusal to renew or reinstate a	306
license; imposition of probation; or issuance of an order of	307
censure or other reprimand;	308
(19) Violation of the conditions placed by the board on a	309
certificate of registration <u>license</u> ;	310
(20) Failure to use universal blood and body fluid	311
precautions established by rules adopted under section 4731.051 of	312
the Revised Code;	313
(21) Failure to cooperate in an investigation conducted by	314
the board under section 4762.14 of the Revised Code, including	315
failure to comply with a subpoena or order issued by the board or	316
failure to answer truthfully a question presented by the board at	317
a deposition or in written interrogatories, except that failure to	318
cooperate with an investigation shall not constitute grounds for	319
discipline under this section if a court of competent jurisdiction	320
has issued an order that either quashes a subpoena or permits the	321

individual to withhold the testimony or evidence in issue; 322

(22) Failure to comply with the standards of the national 323
certification commission for acupuncture and oriental medicine 324
regarding professional ethics, commitment to patients, commitment 325
to the profession, and commitment to the public; 326

(23) Failure to have adequate professional liability 327
insurance coverage in accordance with section 4762.22 of the 328
Revised Code. 329

(C) Disciplinary actions taken by the board under divisions 330
(A) and (B) of this section shall be taken pursuant to an 331
adjudication under Chapter 119. of the Revised Code, except that 332
in lieu of an adjudication, the board may enter into a consent 333
agreement with an acupuncturist or applicant to resolve an 334
allegation of a violation of this chapter or any rule adopted 335
under it. A consent agreement, when ratified by an affirmative 336
vote of not fewer than six members of the board, shall constitute 337
the findings and order of the board with respect to the matter 338
addressed in the agreement. If the board refuses to ratify a 339
consent agreement, the admissions and findings contained in the 340
consent agreement shall be of no force or effect. 341

(D) For purposes of divisions (B)(12), (15), and (16) of this 342
section, the commission of the act may be established by a finding 343
by the board, pursuant to an adjudication under Chapter 119. of 344
the Revised Code, that the applicant or ~~certificate~~ license holder 345
committed the act in question. The board shall have no 346
jurisdiction under these divisions in cases where the trial court 347
renders a final judgment in the ~~certificate~~ license holder's favor 348
and that judgment is based upon an adjudication on the merits. The 349
board shall have jurisdiction under these divisions in cases where 350
the trial court issues an order of dismissal upon technical or 351
procedural grounds. 352

(E) The sealing of conviction records by any court shall have 353
no effect upon a prior board order entered under the provisions of 354
this section or upon the board's jurisdiction to take action under 355
the provisions of this section if, based upon a plea of guilty, a 356
judicial finding of guilt, or a judicial finding of eligibility 357
for intervention in lieu of conviction, the board issued a notice 358
of opportunity for a hearing prior to the court's order to seal 359
the records. The board shall not be required to seal, destroy, 360
redact, or otherwise modify its records to reflect the court's 361
sealing of conviction records. 362

(F) For purposes of this division, any individual who holds a 363
~~certificate of registration~~ license issued under this chapter, or 364
applies for a ~~certificate of registration~~ license, shall be deemed 365
to have given consent to submit to a mental or physical 366
examination when directed to do so in writing by the board and to 367
have waived all objections to the admissibility of testimony or 368
examination reports that constitute a privileged communication. 369

(1) In enforcing division (B)(5) of this section, the board, 370
upon a showing of a possible violation, may compel any individual 371
who holds a ~~certificate of registration~~ license issued under this 372
chapter or who has applied for a ~~certificate of registration~~ 373
license pursuant to this chapter to submit to a mental 374
examination, physical examination, including an HIV test, or both 375
a mental and physical examination. The expense of the examination 376
is the responsibility of the individual compelled to be examined. 377
Failure to submit to a mental or physical examination or consent 378
to an HIV test ordered by the board constitutes an admission of 379
the allegations against the individual unless the failure is due 380
to circumstances beyond the individual's control, and a default 381
and final order may be entered without the taking of testimony or 382
presentation of evidence. If the board finds an acupuncturist 383
unable to practice because of the reasons set forth in division 384

(B)(5) of this section, the board shall require the acupuncturist 385
to submit to care, counseling, or treatment by physicians approved 386
or designated by the board, as a condition for an initial, 387
continued, reinstated, or renewed ~~certificate of registration~~ 388
license. An individual affected by this division shall be afforded 389
an opportunity to demonstrate to the board the ability to resume 390
practicing in compliance with acceptable and prevailing standards 391
of care. 392

(2) For purposes of division (B)(6) of this section, if the 393
board has reason to believe that any individual who holds a 394
~~certificate of registration~~ license issued under this chapter or 395
any applicant for a ~~certificate of registration~~ license suffers 396
such impairment, the board may compel the individual to submit to 397
a mental or physical examination, or both. The expense of the 398
examination is the responsibility of the individual compelled to 399
be examined. Any mental or physical examination required under 400
this division shall be undertaken by a treatment provider or 401
physician qualified to conduct such examination and chosen by the 402
board. 403

Failure to submit to a mental or physical examination ordered 404
by the board constitutes an admission of the allegations against 405
the individual unless the failure is due to circumstances beyond 406
the individual's control, and a default and final order may be 407
entered without the taking of testimony or presentation of 408
evidence. If the board determines that the individual's ability to 409
practice is impaired, the board shall suspend the individual's 410
~~certificate~~ license or deny the individual's application and shall 411
require the individual, as a condition for an initial, continued, 412
reinstated, or renewed ~~certificate of registration~~ license, to 413
submit to treatment. 414

Before being eligible to apply for reinstatement of a 415
~~certificate~~ license suspended under this division, the 416

acupuncturist shall demonstrate to the board the ability to resume 417
practice in compliance with acceptable and prevailing standards of 418
care. The demonstration shall include the following: 419

(a) Certification from a treatment provider approved under 420
section 4731.25 of the Revised Code that the individual has 421
successfully completed any required inpatient treatment; 422

(b) Evidence of continuing full compliance with an aftercare 423
contract or consent agreement; 424

(c) Two written reports indicating that the individual's 425
ability to practice has been assessed and that the individual has 426
been found capable of practicing according to acceptable and 427
prevailing standards of care. The reports shall be made by 428
individuals or providers approved by the board for making such 429
assessments and shall describe the basis for their determination. 430

The board may reinstate a ~~certificate~~ license suspended under 431
this division after such demonstration and after the individual 432
has entered into a written consent agreement. 433

When the impaired acupuncturist resumes practice, the board 434
shall require continued monitoring of the acupuncturist. The 435
monitoring shall include monitoring of compliance with the written 436
consent agreement entered into before reinstatement or with 437
conditions imposed by board order after a hearing, and, upon 438
termination of the consent agreement, submission to the board for 439
at least two years of annual written progress reports made under 440
penalty of falsification stating whether the acupuncturist has 441
maintained sobriety. 442

(G) If the secretary and supervising member determine that 443
there is clear and convincing evidence that an acupuncturist has 444
violated division (B) of this section and that the individual's 445
continued practice presents a danger of immediate and serious harm 446
to the public, they may recommend that the board suspend the 447

individual's ~~certificate of registration~~ license without a prior 448
hearing. Written allegations shall be prepared for consideration 449
by the board. 450

The board, upon review of the allegations and by an 451
affirmative vote of not fewer than six of its members, excluding 452
the secretary and supervising member, may suspend a ~~certificate~~ 453
license without a prior hearing. A telephone conference call may 454
be utilized for reviewing the allegations and taking the vote on 455
the summary suspension. 456

The board shall issue a written order of suspension by 457
certified mail or in person in accordance with section 119.07 of 458
the Revised Code. The order shall not be subject to suspension by 459
the court during pendency of any appeal filed under section 119.12 460
of the Revised Code. If the acupuncturist requests an adjudicatory 461
hearing by the board, the date set for the hearing shall be within 462
fifteen days, but not earlier than seven days, after the 463
acupuncturist requests the hearing, unless otherwise agreed to by 464
both the board and the ~~certificate~~ license holder. 465

A summary suspension imposed under this division shall remain 466
in effect, unless reversed on appeal, until a final adjudicative 467
order issued by the board pursuant to this section and Chapter 468
119. of the Revised Code becomes effective. The board shall issue 469
its final adjudicative order within sixty days after completion of 470
its hearing. Failure to issue the order within sixty days shall 471
result in dissolution of the summary suspension order, but shall 472
not invalidate any subsequent, final adjudicative order. 473

(H) If the board takes action under division (B)(11), (13), 474
or (14) of this section, and the judicial finding of guilt, guilty 475
plea, or judicial finding of eligibility for intervention in lieu 476
of conviction is overturned on appeal, upon exhaustion of the 477
criminal appeal, a petition for reconsideration of the order may 478
be filed with the board along with appropriate court documents. 479

Upon receipt of a petition and supporting court documents, the 480
board shall reinstate the ~~certificate of registration~~ license. The 481
board may then hold an adjudication under Chapter 119. of the 482
Revised Code to determine whether the individual committed the act 483
in question. Notice of opportunity for hearing shall be given in 484
accordance with Chapter 119. of the Revised Code. If the board 485
finds, pursuant to an adjudication held under this division, that 486
the individual committed the act, or if no hearing is requested, 487
it may order any of the sanctions specified in division (B) of 488
this section. 489

(I) The ~~certificate of registration~~ license of an 490
acupuncturist and the acupuncturist's practice in this state are 491
automatically suspended as of the date the acupuncturist pleads 492
guilty to, is found by a judge or jury to be guilty of, or is 493
subject to a judicial finding of eligibility for intervention in 494
lieu of conviction in this state or treatment or intervention in 495
lieu of conviction in another jurisdiction for any of the 496
following criminal offenses in this state or a substantially 497
equivalent criminal offense in another jurisdiction: aggravated 498
murder, murder, voluntary manslaughter, felonious assault, 499
kidnapping, rape, sexual battery, gross sexual imposition, 500
aggravated arson, aggravated robbery, or aggravated burglary. 501
Continued practice after the suspension shall be considered 502
practicing without a ~~certificate~~ license. 503

The board shall notify the individual subject to the 504
suspension by certified mail or in person in accordance with 505
section 119.07 of the Revised Code. If an individual whose 506
~~certificate~~ license is suspended under this division fails to make 507
a timely request for an adjudication under Chapter 119. of the 508
Revised Code, the board shall enter a final order permanently 509
revoking the individual's ~~certificate of registration~~ license. 510

(J) In any instance in which the board is required by Chapter 511

119. of the Revised Code to give notice of opportunity for hearing 512
and the individual subject to the notice does not timely request a 513
hearing in accordance with section 119.07 of the Revised Code, the 514
board is not required to hold a hearing, but may adopt, by an 515
affirmative vote of not fewer than six of its members, a final 516
order that contains the board's findings. In the final order, the 517
board may order any of the sanctions identified under division (A) 518
or (B) of this section. 519

(K) Any action taken by the board under division (B) of this 520
section resulting in a suspension shall be accompanied by a 521
written statement of the conditions under which the 522
acupuncturist's ~~certificate~~ license may be reinstated. The board 523
shall adopt rules in accordance with Chapter 119. of the Revised 524
Code governing conditions to be imposed for reinstatement. 525
Reinstatement of a ~~certificate~~ license suspended pursuant to 526
division (B) of this section requires an affirmative vote of not 527
fewer than six members of the board. 528

(L) When the board refuses to grant a ~~certificate of~~ 529
~~registration~~ license as an acupuncturist to an applicant, revokes 530
an individual's ~~certificate of registration~~ license, refuses to 531
renew a ~~certificate of registration~~ license, or refuses to 532
reinstate an individual's ~~certificate of registration~~ license, the 533
board may specify that its action is permanent. An individual 534
subject to a permanent action taken by the board is forever 535
thereafter ineligible to hold a ~~certificate of registration~~ 536
license as an acupuncturist and the board shall not accept an 537
application for reinstatement of the ~~certificate~~ license or for 538
issuance of a new ~~certificate~~ license. 539

(M) Notwithstanding any other provision of the Revised Code, 540
all of the following apply: 541

(1) The surrender of a ~~certificate of registration~~ license as 542
an acupuncturist issued under this chapter is not effective unless 543

or until accepted by the board. Reinstatement of a ~~certificate~~ 544
license surrendered to the board requires an affirmative vote of 545
not fewer than six members of the board. 546

(2) An application made under this chapter for a ~~certificate~~ 547
~~of registration~~ license may not be withdrawn without approval of 548
the board. 549

(3) Failure by an individual to renew a ~~certificate of~~ 550
~~registration~~ license in accordance with section 4762.06 of the 551
Revised Code shall not remove or limit the board's jurisdiction to 552
take disciplinary action under this section against the 553
individual. 554

Sec. 4762.131. On receipt of a notice pursuant to section 555
2301.373 of the Revised Code, the state medical board shall comply 556
with that section with respect to a ~~certificate of registration~~ 557
license issued pursuant to this chapter. 558

Sec. 4762.132. If the state medical board has reason to 559
believe that any person who has been granted a ~~certificate~~ license 560
under this chapter is mentally ill or mentally incompetent, it may 561
file in the probate court of the county in which the person has a 562
legal residence an affidavit in the form prescribed in section 563
5122.11 of the Revised Code and signed by the board secretary or a 564
member of the board secretary's staff, whereupon the same 565
proceedings shall be had as provided in Chapter 5122. of the 566
Revised Code. The attorney general may represent the board in any 567
proceeding commenced under this section. 568

If any person who has been granted a ~~certificate~~ license is 569
adjudged by a probate court to be mentally ill or mentally 570
incompetent, the person's ~~certificate~~ license shall be 571
automatically suspended until the person has filed with the state 572
medical board a certified copy of an adjudication by a probate 573

court of the person's subsequent restoration to competency or has 574
submitted to the board proof, satisfactory to the board, that the 575
person has been discharged as having a restoration to competency 576
in the manner and form provided in section 5122.38 of the Revised 577
Code. The judge of the probate court shall forthwith notify the 578
state medical board of an adjudication of mental illness or mental 579
incompetence, and shall note any suspension of a ~~certificate~~ 580
license in the margin of the court's record of such ~~certificate~~ 581
license. 582

Sec. 4762.14. (A) The state medical board shall investigate 583
evidence that appears to show that any person has violated this 584
chapter or the rules adopted under it. Any person may report to 585
the board in a signed writing any information the person has that 586
appears to show a violation of any provision of this chapter or 587
the rules adopted under it. In the absence of bad faith, a person 588
who reports such information or testifies before the board in an 589
adjudication conducted under Chapter 119. of the Revised Code 590
shall not be liable for civil damages as a result of reporting the 591
information or providing testimony. Each complaint or allegation 592
of a violation received by the board shall be assigned a case 593
number and be recorded by the board. 594

(B) Investigations of alleged violations of this chapter or 595
rules adopted under it shall be supervised by the supervising 596
member elected by the board in accordance with section 4731.02 of 597
the Revised Code and by the secretary as provided in section 598
4762.15 of the Revised Code. The board's president may designate 599
another member of the board to supervise the investigation in 600
place of the supervising member. A member of the board who 601
supervises the investigation of a case shall not participate in 602
further adjudication of the case. 603

(C) In investigating a possible violation of this chapter or 604

the rules adopted under it, the board may administer oaths, order 605
the taking of depositions, issue subpoenas, and compel the 606
attendance of witnesses and production of books, accounts, papers, 607
records, documents, and testimony, except that a subpoena for 608
patient record information shall not be issued without 609
consultation with the attorney general's office and approval of 610
the secretary and supervising member of the board. Before issuance 611
of a subpoena for patient record information, the secretary and 612
supervising member shall determine whether there is probable cause 613
to believe that the complaint filed alleges a violation of this 614
chapter or the rules adopted under it and that the records sought 615
are relevant to the alleged violation and material to the 616
investigation. The subpoena may apply only to records that cover a 617
reasonable period of time surrounding the alleged violation. 618

On failure to comply with any subpoena issued by the board 619
and after reasonable notice to the person being subpoenaed, the 620
board may move for an order compelling the production of persons 621
or records pursuant to the Rules of Civil Procedure. 622

A subpoena issued by the board may be served by a sheriff, 623
the sheriff's deputy, or a board employee designated by the board. 624
Service of a subpoena issued by the board may be made by 625
delivering a copy of the subpoena to the person named therein, 626
reading it to the person, or leaving it at the person's usual 627
place of residence. When the person being served is an 628
acupuncturist, service of the subpoena may be made by certified 629
mail, restricted delivery, return receipt requested, and the 630
subpoena shall be deemed served on the date delivery is made or 631
the date the person refuses to accept delivery. 632

A sheriff's deputy who serves a subpoena shall receive the 633
same fees as a sheriff. Each witness who appears before the board 634
in obedience to a subpoena shall receive the fees and mileage 635
provided for witnesses in civil cases in the courts of common 636

pleas. 637

(D) All hearings and investigations of the board shall be 638
considered civil actions for the purposes of section 2305.252 of 639
the Revised Code. 640

(E) Information received by the board pursuant to an 641
investigation is confidential and not subject to discovery in any 642
civil action. 643

The board shall conduct all investigations and proceedings in 644
a manner that protects the confidentiality of patients and persons 645
who file complaints with the board. The board shall not make 646
public the names or any other identifying information about 647
patients or complainants unless proper consent is given. 648

The board may share any information it receives pursuant to 649
an investigation, including patient records and patient record 650
information, with law enforcement agencies, other licensing 651
boards, and other governmental agencies that are prosecuting, 652
adjudicating, or investigating alleged violations of statutes or 653
administrative rules. An agency or board that receives the 654
information shall comply with the same requirements regarding 655
confidentiality as those with which the state medical board must 656
comply, notwithstanding any conflicting provision of the Revised 657
Code or procedure of the agency or board that applies when it is 658
dealing with other information in its possession. In a judicial 659
proceeding, the information may be admitted into evidence only in 660
accordance with the Rules of Evidence, but the court shall require 661
that appropriate measures are taken to ensure that confidentiality 662
is maintained with respect to any part of the information that 663
contains names or other identifying information about patients or 664
complainants whose confidentiality was protected by the state 665
medical board when the information was in the board's possession. 666
Measures to ensure confidentiality that may be taken by the court 667
include sealing its records or deleting specific information from 668

its records. 669

(F) The state medical board shall develop requirements for 670
and provide appropriate initial training and continuing education 671
for investigators employed by the board to carry out its duties 672
under this chapter. The training and continuing education may 673
include enrollment in courses operated or approved by the Ohio 674
peace officer training council that the board considers 675
appropriate under conditions set forth in section 109.79 of the 676
Revised Code. 677

(G) On a quarterly basis, the board shall prepare a report 678
that documents the disposition of all cases during the preceding 679
three months. The report shall contain the following information 680
for each case with which the board has completed its activities: 681

(1) The case number assigned to the complaint or alleged 682
violation; 683

(2) The type of ~~certificate~~ license to practice, if any, held 684
by the individual against whom the complaint is directed; 685

(3) A description of the allegations contained in the 686
complaint; 687

(4) The disposition of the case. 688

The report shall state how many cases are still pending, and 689
shall be prepared in a manner that protects the identity of each 690
person involved in each case. The report is a public record for 691
purposes of section 149.43 of the Revised Code. 692

Sec. 4762.15. (A) As used in this section, "prosecutor" has 693
the same meaning as in section 2935.01 of the Revised Code. 694

(B) Whenever any person holding a valid ~~certificate~~ license 695
issued pursuant to this chapter pleads guilty to, is subject to a 696
judicial finding of guilt of, or is subject to a judicial finding 697
of eligibility for intervention in lieu of conviction for a 698

violation of Chapter 2907., 2925., or 3719. of the Revised Code or 699
of any substantively comparable ordinance of a municipal 700
corporation in connection with the person's practice, the 701
prosecutor in the case, on forms prescribed and provided by the 702
state medical board, shall promptly notify the board of the 703
conviction. Within thirty days of receipt of that information, the 704
board shall initiate action in accordance with Chapter 119. of the 705
Revised Code to determine whether to suspend or revoke the 706
~~certificate~~ license under section 4762.13 of the Revised Code. 707

(C) The prosecutor in any case against any person holding a 708
valid ~~certificate~~ license issued pursuant to this chapter, on 709
forms prescribed and provided by the state medical board, shall 710
notify the board of any of the following: 711

(1) A plea of guilty to, a finding of guilt by a jury or 712
court of, or judicial finding of eligibility for intervention in 713
lieu of conviction for a felony, or a case in which the trial 714
court issues an order of dismissal upon technical or procedural 715
grounds of a felony charge; 716

(2) A plea of guilty to, a finding of guilt by a jury or 717
court of, or judicial finding of eligibility for intervention in 718
lieu of conviction for a misdemeanor committed in the course of 719
practice, or a case in which the trial court issues an order of 720
dismissal upon technical or procedural grounds of a charge of a 721
misdemeanor, if the alleged act was committed in the course of 722
practice; 723

(3) A plea of guilty to, a finding of guilt by a jury or 724
court of, or judicial finding of eligibility for intervention in 725
lieu of conviction for a misdemeanor involving moral turpitude, or 726
a case in which the trial court issues an order of dismissal upon 727
technical or procedural grounds of a charge of a misdemeanor 728
involving moral turpitude. 729

The report shall include the name and address of the 730
~~certificate~~ license holder, the nature of the offense for which 731
the action was taken, and the certified court documents recording 732
the action. 733

Sec. 4762.16. (A) Within sixty days after the imposition of 734
any formal disciplinary action taken by any health care facility, 735
including a hospital, health care facility operated by ~~an~~ a health 736
insuring corporation, ambulatory surgical center, or similar 737
facility, against any individual holding a valid ~~certificate of~~ 738
~~registration~~ license as an acupuncturist, the chief administrator 739
or executive officer of the facility shall report to the state 740
medical board the name of the individual, the action taken by the 741
facility, and a summary of the underlying facts leading to the 742
action taken. Upon request, the board shall be provided certified 743
copies of the patient records that were the basis for the 744
facility's action. Prior to release to the board, the summary 745
shall be approved by the peer review committee that reviewed the 746
case or by the governing board of the facility. 747

The filing of a report with the board or decision not to file 748
a report, investigation by the board, or any disciplinary action 749
taken by the board, does not preclude a health care facility from 750
taking disciplinary action against an acupuncturist. 751

In the absence of fraud or bad faith, no individual or entity 752
that provides patient records to the board shall be liable in 753
damages to any person as a result of providing the records. 754

(B) An acupuncturist, professional association or society of 755
acupuncturists, physician, or professional association or society 756
of physicians that believes a violation of any provision of this 757
chapter, Chapter 4731. of the Revised Code, or rule of the board 758
has occurred shall report to the board the information upon which 759
the belief is based. This division does not require any treatment 760

provider approved by the board under section 4731.25 of the Revised Code or any employee, agent, or representative of such 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 794
leading to the action taken. 795

The filing of a report with the board or decision not to file 796
a report, investigation by the board, or any disciplinary action 797
taken by the board, does not preclude a professional organization 798
from taking disciplinary action against an acupuncturist. 799

(D) Any insurer providing professional liability insurance to 800
any person holding a valid ~~certificate of registration~~ license as 801
an acupuncturist or any other entity that seeks to indemnify the 802
professional liability of an acupuncturist shall notify the board 803
within thirty days after the final disposition of any written 804
claim for damages where such disposition results in a payment 805
exceeding twenty-five thousand dollars. The notice shall contain 806
the following information: 807

(1) The name and address of the person submitting the 808
notification; 809

(2) The name and address of the insured who is the subject of 810
the claim; 811

(3) The name of the person filing the written claim; 812

(4) The date of final disposition; 813

(5) If applicable, the identity of the court in which the 814
final disposition of the claim took place. 815

(E) The board may investigate possible violations of this 816
chapter or the rules adopted under it that are brought to its 817
attention as a result of the reporting requirements of this 818
section, except that the board shall conduct an investigation if a 819
possible violation involves repeated malpractice. As used in this 820
division, "repeated malpractice" means three or more claims for 821
malpractice within the previous five-year period, each resulting 822
in a judgment or settlement in excess of twenty-five thousand 823

dollars in favor of the claimant, and each involving negligent 824
conduct by the acupuncturist. 825

(F) All summaries, reports, and records received and 826
maintained by the board pursuant to this section shall be held in 827
confidence and shall not be subject to discovery or introduction 828
in evidence in any federal or state civil action involving an 829
acupuncturist, supervising physician, or health care facility 830
arising out of matters that are the subject of the reporting 831
required by this section. The board may use the information 832
obtained only as the basis for an investigation, as evidence in a 833
disciplinary hearing against an acupuncturist or supervising 834
physician, or in any subsequent trial or appeal of a board action 835
or order. 836

The board may disclose the summaries and reports it receives 837
under this section only to health care facility committees within 838
or outside this state that are involved in credentialing or 839
recredentialing an acupuncturist or supervising physician or 840
reviewing their privilege to practice within a particular 841
facility. The board shall indicate whether or not the information 842
has been verified. Information transmitted by the board shall be 843
subject to the same confidentiality provisions as when maintained 844
by the board. 845

(G) Except for reports filed by an individual pursuant to 846
division (B) of this section, the board shall send a copy of any 847
reports or summaries it receives pursuant to this section to the 848
acupuncturist. The acupuncturist shall have the right to file a 849
statement with the board concerning the correctness or relevance 850
of the information. The statement shall at all times accompany 851
that part of the record in contention. 852

(H) An individual or entity that reports to the board or 853
refers an impaired acupuncturist to a treatment provider approved 854
by the board under section 4731.25 of the Revised Code shall not 855

be subject to suit for civil damages as a result of the report, 856
referral, or provision of the information. 857

(I) In the absence of fraud or bad faith, a professional 858
association or society of acupuncturists that sponsors a committee 859
or program to provide peer assistance to an acupuncturist with 860
substance abuse problems, a representative or agent of such a 861
committee or program, and a member of the state medical board 862
shall not be held liable in damages to any person by reason of 863
actions taken to refer an acupuncturist to a treatment provider 864
approved under section 4731.25 of the Revised Code for examination 865
or treatment. 866

Sec. 4762.18. (A) Subject to division (E) of this section, 867
the attorney general, the prosecuting attorney of any county in 868
which the offense was committed or the offender resides, the state 869
medical board, or any other person having knowledge of a person 870
engaged either directly or by complicity in the practice of 871
acupuncture without having first obtained a ~~certificate of~~ 872
~~registration~~ license to do so pursuant to this chapter, may, in 873
accord with provisions of the Revised Code governing injunctions, 874
maintain an action in the name of the state to enjoin any person 875
from engaging either directly or by complicity in the unlawful 876
practice of acupuncture by applying for an injunction in any court 877
of competent jurisdiction. 878

(B) Prior to application for an injunction under division (A) 879
of this section, the secretary of the state medical board shall 880
notify the person allegedly engaged either directly or by 881
complicity in the unlawful practice of acupuncture by registered 882
mail that the secretary has received information indicating that 883
this person is so engaged. The person shall answer the secretary 884
within thirty days showing that the person is either properly 885
licensed for the stated activity or that the person is not in 886

violation of this chapter. If the answer is not forthcoming within 887
thirty days after notice by the secretary, the secretary shall 888
request that the attorney general, the prosecuting attorney of the 889
county in which the offense was committed or the offender resides, 890
or the state medical board proceed as authorized in this section. 891

(C) Upon the filing of a verified petition in court, the 892
court shall conduct a hearing on the petition and shall give the 893
same preference to this proceeding as is given all proceedings 894
under Chapter 119. of the Revised Code, irrespective of the 895
position of the proceeding on the calendar of the court. 896

(D) Injunction proceedings as authorized by this section 897
shall be in addition to, and not in lieu of, all penalties and 898
other remedies provided in this chapter. 899

(E) An injunction proceeding permitted by division (A) of 900
this section may not be maintained against a person described in 901
division (B) of section 4762.02 of the Revised Code or a 902
chiropractor who holds a valid certificate to practice acupuncture 903
issued under section 4734.283 of the Revised Code. 904

Sec. 4762.22. An acupuncturist licensed under this chapter 905
shall have professional liability insurance coverage in an amount 906
not less than five hundred thousand dollars. 907

Section 2. That existing sections 4762.02, 4762.03, 4762.04, 908
4762.05, 4762.06, 4762.08, 4762.09, 4762.10, 4762.11, 4762.13, 909
4762.131, 4762.132, 4762.14, 4762.15, 4762.16, and 4762.18 of the 910
Revised Code are hereby repealed. 911