

As Introduced

**128th General Assembly
Regular Session
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S. B. No. 265

Senator Schuring

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A B I L L

To amend sections 4762.01, 4762.03, 4762.05, 4762.06, 1
4762.08, 4762.10, 4762.13, 4762.131, and 4762.19 2
and to enact section 4762.041 of the Revised Code 3
to allow acupuncturists to practice with herbs. 4

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

Section 1. That sections 4762.01, 4762.03, 4762.05, 4762.06, 5
4762.08, 4762.10, 4762.13, 4762.131, and 4762.19 be amended and 6
section 4762.041 of the Revised Code be enacted to read as 7
follows: 8

Sec. 4762.01. As used in this chapter: 9

(A) "Acupuncture" means a form of health care performed by 10
the insertion and removal of specialized needles, with or without 11
the application of moxibustion or electrical stimulation, to 12
specific areas of the human body. 13

(B) "Certificate endorsement" means the designation issued by 14
the state medical board and included on a certificate to practice 15
as an acupuncturist issued under this chapter demonstrating the 16
board's determination that the certificate holder has met the 17
requirements specified in section 4762.041 of the Revised Code and 18
is authorized to include the following, as applicable, in the 19
practice of acupuncture: 20

(1) The use of patent herbs, in the case of a person who has met the requirements specified in division (A)(1) or (2) of section 4762.041 of the Revised Code; 21
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(2) The use of materia medica, in the case of a person who has met the requirements specified in division (A)(3) of section 4762.041 of the Revised Code. 24
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(C) "Chiropractor" means an individual licensed under Chapter 4734. of the Revised Code to engage in the practice of chiropractic. 27
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~~(C)~~(D)(1) "Materia medica" means herbs, including patent herbs; vitamins; minerals; organ extracts; homeopathics; or physiologic materials, any of which are used for energetic or physiologic therapy and in accordance with both of the following: 30
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(a) Traditional or modern oriental medicine theory; 34

(b) Standards for oriental medicine or Chinese herbology, as those standards are established by the national certification commission for acupuncture and oriental medicine. 35
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(2) The use of "materia medica" includes recommending, advising, or furnishing nonfraudulent information about herbs, vitamins, amino acids, carbohydrates, sugars, enzymes, food concentrates, food, food supplements, or dietary supplements. 38
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(E) "Moxibustion" means the use of an herbal heat source on one or more acupuncture points. 42
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~~(D)~~(F) "Patent herb" means an herb that is manufactured in the form of a pill, capsule, or tincture. 44
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(G) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry. 46
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Sec. 4762.03. (A) An individual seeking a certificate to 49

practice as an acupuncturist shall file with the state medical 50
board a written application on a form prescribed and supplied by 51
the board. The application shall include all of the following: 52

(1) Evidence satisfactory to the board that the applicant is 53
at least eighteen years of age and of good moral character; 54

(2) Evidence satisfactory to the board that the applicant ~~has~~ 55
~~been designated as a diplomate in acupuncture by~~ holds a current 56
and active designation from the national certification commission 57
for acupuncture and oriental medicine ~~and that the designation is~~ 58
~~current and active;~~ as a diplomate in acupuncture or a diplomate 59
in oriental medicine. 60

(3) Any other information the board requires. 61

(B) The board shall review all applications received under 62
this section. The board shall determine whether an applicant meets 63
the requirements to receive a certificate to practice not later 64
than sixty days after receiving a complete application. The 65
affirmative vote of not fewer than six members of the board is 66
required to determine that an applicant meets the requirements for 67
a certificate. 68

(C) At the time of making application for a certificate to 69
practice, the applicant shall pay the board a fee of one hundred 70
dollars, no part of which shall be returned. 71

Sec. 4762.041. (A)(1) In the case of a person who holds a 72
certificate to practice as an acupuncturist issued under this 73
chapter on or before the effective date of this section, the 74
person may apply to the state medical board for a certificate 75
endorsement to include the use of patent herbs in the practice of 76
acupuncture. 77

To be eligible for the certificate endorsement, the person's 78
application shall include evidence of both of the following: 79

(a) That the person holds a certificate to practice as an acupuncturist and it is in good standing; 80
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(b) That the person has successfully completed both of the following through either an acupuncture education program accredited by the accreditation commission for acupuncture and oriental medicine or a continuing education study program approved by the national certification commission for acupuncture and oriental medicine: 82
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(i) At least one hundred hours of classroom study; 88

(ii) In addition to the classroom study specified in division (A)(1)(b)(i) of this section, at least one fifteen-hour class in herb and drug interactions and contraindications. 89
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(2) In the case of a person who was enrolled in a program of study at a school accredited by the accreditation commission for acupuncture and oriental medicine not more than six months prior to the effective date of this section, but during that time did not complete the coursework necessary to obtain designation as a diplomate in Chinese herbology or oriental medicine from the national certification commission for acupuncture and oriental medicine, the person may apply for a certificate endorsement to include the use of patent herbs in the practice of acupuncture by meeting the same educational requirements that an applicant must meet under division (A)(1)(b) of this section. The application may be submitted after receiving a certificate to practice as an acupuncturist or at the time of applying for a certificate to practice as an acupuncturist. 92
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To be eligible for the certificate endorsement, the person's application shall include evidence of the following: 106
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(a) If applicable, that the person holds a certificate to practice as an acupuncturist and it is in good standing; 108
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(b) That the person has successfully completed the 110

educational requirements specified in division (A)(1)(b) of this 111
section. 112

(3) In the case of a person to whom division (A)(1) or (2) of 113
this section does not apply, the person may apply for a 114
certificate endorsement to include the use of materia medica in 115
the practice of acupuncture. The application may be submitted 116
after receiving a certificate to practice as an acupuncturist or 117
at the time of applying for a certificate to practice as an 118
acupuncturist. 119

To be eligible for the endorsement, the person's application 120
shall include evidence of the following: 121

(a) If applicable, that the person holds a certificate to 122
practice as an acupuncturist and it is in good standing; 123

(b) That the person has obtained designation as a diplomate 124
in Chinese herbology or oriental medicine from the national 125
certification commission for acupuncture and oriental medicine and 126
the designation is current and valid. 127

(B) If the board determines that an applicant meets the 128
applicable requirements specified in division (A) of this section, 129
the board shall issue to the applicant the appropriate certificate 130
endorsement to include the use of patent herbs or materia medica 131
in the practice of acupuncture. If necessary, the board shall 132
issue to the applicant a new certificate to practice as an 133
acupuncturist. 134

If an applicant applies for an initial certificate 135
endorsement at the time of applying under section 4762.03 of the 136
Revised Code for an initial certificate to practice or under 137
section 4762.06 of the Revised Code for renewal of a certificate 138
to practice, the board shall not charge a fee for issuing the 139
endorsement. If the applicant applies for an initial certificate 140
endorsement at any other time, the board shall charge a fee for 141

issuing the endorsement that is the same amount as the fee for 142
issuing a duplicate certificate under section 4762.05 of the 143
Revised Code. 144

(C) A certificate endorsement shall expire biennially and may 145
be renewed in accordance with section 4762.06 of the Revised Code. 146

Sec. 4762.05. Upon application by the holder of a certificate 147
to practice as an acupuncturist, the state medical board shall 148
issue a duplicate certificate to practice to replace one that is 149
missing or damaged, to reflect a name change, to include a 150
certificate endorsement issued under section 4762.041 of the 151
Revised Code, or for any other reasonable cause. The fee for a 152
duplicate certificate is thirty-five dollars. 153

Sec. 4762.06. (A) A person seeking to renew a certificate to 154
practice as an acupuncturist shall, on or before the thirty-first 155
day of January of each even-numbered year, apply for renewal of 156
the certificate. If a person seeks to renew a certificate 157
endorsement issued under section 4762.041 of the Revised Code, the 158
person shall apply for renewal of the endorsement with the 159
certificate renewal application. The state medical board shall 160
send certificate renewal notices at least one month prior to the 161
expiration date. If applicable, the board shall include in the 162
certificate renewal notice a notice to renew the certificate 163
holder's certificate endorsement. 164

Applications shall be submitted to the board on forms the 165
board shall prescribe and supply. Each application shall be 166
accompanied by a biennial renewal fee of one hundred dollars. 167

The applicant shall report any criminal offense that 168
constitutes grounds for refusing to issue a certificate under 169
section 4762.13 of the Revised Code to which the applicant has 170
pleaded guilty, of which the applicant has been found guilty, or 171

for which the applicant has been found eligible for intervention 172
in lieu of conviction, since last signing an application for a 173
certificate to practice as an acupuncturist. 174

(B) To be eligible for renewal of a certificate to practice, 175
~~an acupuncturist the applicant~~ must certify to the board that the 176
~~acupuncturist applicant~~ has maintained ~~the acupuncturist's~~ 177
designation as a diplomate in acupuncture or oriental medicine, as 178
applicable, by the national certification commission for 179
acupuncture and oriental medicine. 180

To be eligible for renewal of a certificate endorsement, the 181
applicant must certify to the board that the applicant has 182
successfully completed one six-hour course in herb and drug 183
interaction approved by the national certification commission for 184
acupuncture and oriental medicine in the six years immediately 185
preceding the certificate endorsement expiration date. 186

(C) If an applicant submits a complete renewal application 187
and qualifies for renewal pursuant to division (B) of this 188
section, the board shall issue to the applicant a renewed 189
certificate to practice ~~as an acupuncturist~~ and, if applicable, 190
include the renewed certificate endorsement on the certificate. 191

(D) A certificate to practice that is not renewed on or 192
before its expiration date is automatically suspended on its 193
expiration date. If a certificate has been suspended pursuant to 194
this division for two years or less, the board shall reinstate the 195
certificate upon an applicant's submission of a renewal 196
application, the biennial renewal fee, and the applicable monetary 197
penalty. The penalty for reinstatement is twenty-five dollars. ~~If~~ 198

A certificate endorsement that is not renewed on or before 199
its expiration date is automatically suspended on its expiration 200
date. The board shall reinstate the endorsement upon an 201
applicant's submission of a renewal application and payment of a 202

monetary penalty of twenty-five dollars. A certificate to practice 203
renewed in accordance with this section shall not be invalidated 204
if the certificate holder does not renew an endorsement in 205
accordance with this section. 206

If a certificate has been suspended pursuant to this division 207
for more than two years, it may be restored upon an applicant's 208
submission of a restoration application, the biennial registration 209
fee, and the applicable monetary penalty and compliance with 210
sections 4776.01 to 4776.04 of the Revised Code. The board shall 211
not restore a certificate ~~to practice~~ unless the board, in its 212
discretion, decides that the results of the criminal records check 213
do not make the applicant ineligible for a certificate issued 214
pursuant to section 4762.04 of the Revised Code. The penalty for 215
restoration is fifty dollars. 216

Sec. 4762.08. (A) A person who holds a certificate to 217
practice as an acupuncturist issued under this chapter may use the 218
following titles, initials, or abbreviations, or the equivalent of 219
such titles, initials, or abbreviations, to identify the person as 220
an acupuncturist: "Acupuncturist," "Licensed Acupuncturist," 221
"L.Ac.," "Diplomate of Acupuncture (NCCAOM)," "Dipl. Ac. 222
(NCCAOM)," "Diplomate of Oriental Medicine (NCCAOM)," or "National 223
Board Certified in Acupuncture (NCCAOM)." The Except as provided 224
in division (B) of this section, the person shall not use other 225
titles, initials, or abbreviations in conjunction with the 226
person's practice of acupuncture, including the title "doctor." 227

(B) A person who obtains a certificate endorsement under 228
division (A)(1) or (2) of section 4762.041 of the Revised Code to 229
include the use of patent herbs in the practice of acupuncture may 230
use the phrase "Endorsed by the state of Ohio to practice with 231
patent herbs" in conjunction with any of the titles, initials, or 232
abbreviations specified in division (A) of this section. 233

A person who obtains a certificate endorsement under division (A)(3) of section 4762.041 of the Revised Code to include the use of materia medica in the practice of acupuncture may use the phrase "Endorsed by the state of Ohio to practice with materia medica" in conjunction with any of the titles, initials, or abbreviations specified in division (A) of this section. The person may also use the title "Diplomate of Chinese Herbology (NCCAOM)" or an equivalent title, initial, or abbreviation to identify the person as a Chinese herbologist.

Sec. 4762.10. (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~~ August 22, 2008, 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~~ August 22, 2008, 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~~ August 22, 2008, 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 265
been subject to any disciplinary action for one year. 266

(C) During an acupuncturist's supervisory period, both of the 267
following apply to the acupuncturist's practice in addition to the 268
requirements of division (E) of this section: 269

(1) The acupuncturist shall perform acupuncture for a patient 270
only if the patient has received a written referral or 271
prescription for acupuncture from a physician or chiropractor. As 272
specified in the referral or prescription, the acupuncturist shall 273
provide reports to the physician or chiropractor on the patient's 274
condition or progress in treatment and comply with the conditions 275
or restrictions on the acupuncturist's course of treatment. 276

(2) The acupuncturist shall perform acupuncture under the 277
general supervision of the patient's referring or prescribing 278
physician or chiropractor. General supervision does not require 279
that the acupuncturist and physician or chiropractor practice in 280
the same office. 281

(D) After an acupuncturist's supervisory period has ended, 282
both of the following apply to the acupuncturist's practice in 283
addition to the applicable requirements of division (E) of this 284
section: 285

(1) Before treating a patient for a particular condition, the 286
acupuncturist shall confirm whether the patient has undergone 287
within the past six months a diagnostic examination that was 288
related to the condition for which the patient is seeking 289
acupuncture and was performed by a physician or chiropractor 290
acting within the ~~physician~~ physician's or chiropractor's scope of 291
practice. Confirmation that the diagnostic examination was 292
performed may be made by obtaining from the patient a signed form 293
stating that the patient has undergone the examination. 294

(2) If the patient does not provide the signed form specified 295

in division (D)(1) of this section or the acupuncturist otherwise 296
determines that the patient has not undergone the diagnostic 297
examination specified in that division, the acupuncturist shall 298
provide to the patient a written recommendation to undergo a 299
diagnostic examination by a physician or chiropractor. 300

(E) In the practice of acupuncture pursuant to a certificate 301
to practice issued under this chapter, all of the following apply: 302

(1) Prior to treating a patient, the acupuncturist shall 303
advise the patient that acupuncture is not a substitute for 304
conventional medical diagnosis and treatment. 305

(2) On initially meeting a patient in person, the 306
acupuncturist shall provide in writing the acupuncturist's name, 307
business address, and business telephone number, and information 308
on acupuncture, including the techniques that are used. 309

(3) While treating a patient, the acupuncturist shall not 310
make a diagnosis. If a patient's condition is not improving or a 311
patient requires emergency medical treatment, the acupuncturist 312
shall consult promptly with a physician. 313

(4) The acupuncturist shall maintain records for each patient 314
treated. The records shall be confidential and shall be retained 315
for not less than three years following termination of treatment. 316

During an acupuncturist's supervisory period, the 317
acupuncturist shall include in a patient's records the written 318
referral or prescription pursuant to which the acupuncturist is 319
treating the patient. 320

Sec. 4762.13. (A) The state medical board, by an affirmative 321
vote of not fewer than six members, may revoke or may refuse to 322
grant a certificate to practice as an acupuncturist to a person 323
found by the board to have committed fraud, misrepresentation, or 324
deception in applying for or securing the certificate. 325

(B) The board, by an affirmative vote of not fewer than six 326
members, shall, to the extent permitted by law, limit, revoke, or 327
suspend an individual's certificate to practice as an 328
acupuncturist, refuse to issue a certificate to an applicant, 329
refuse to reinstate a certificate, or reprimand or place on 330
probation the holder of a certificate for any of the following 331
reasons: 332

(1) Permitting the holder's name or certificate to be used by 333
another person; 334

(2) Failure to comply with the requirements of this chapter, 335
Chapter 4731. of the Revised Code, or any rules adopted by the 336
board; 337

(3) Violating or attempting to violate, directly or 338
indirectly, or assisting in or abetting the violation of, or 339
conspiring to violate, any provision of this chapter, Chapter 340
4731. of the Revised Code, or the rules adopted by the board; 341

(4) A departure from, or failure to conform to, minimal 342
standards of care of similar practitioners under the same or 343
similar circumstances whether or not actual injury to the patient 344
is established; 345

(5) Inability to practice according to acceptable and 346
prevailing standards of care by reason of mental illness or 347
physical illness, including physical deterioration that adversely 348
affects cognitive, motor, or perceptive skills; 349

(6) Impairment of ability to practice according to acceptable 350
and prevailing standards of care because of habitual or excessive 351
use or abuse of drugs, alcohol, or other substances that impair 352
ability to practice; 353

(7) Willfully betraying a professional confidence; 354

(8) Making a false, fraudulent, deceptive, or misleading 355

statement in soliciting or advertising for patients or in securing 356
or attempting to secure a certificate to practice as an 357
acupuncturist. 358

As used in this division, "false, fraudulent, deceptive, or 359
misleading statement" means a statement that includes a 360
misrepresentation of fact, is likely to mislead or deceive because 361
of a failure to disclose material facts, is intended or is likely 362
to create false or unjustified expectations of favorable results, 363
or includes representations or implications that in reasonable 364
probability will cause an ordinarily prudent person to 365
misunderstand or be deceived. 366

(9) Representing, with the purpose of obtaining compensation 367
or other advantage personally or for any other person, that an 368
incurable disease or injury, or other incurable condition, can be 369
permanently cured; 370

(10) The obtaining of, or attempting to obtain, money or a 371
thing of value by fraudulent misrepresentations in the course of 372
practice; 373

(11) A plea of guilty to, a judicial finding of guilt of, or 374
a judicial finding of eligibility for intervention in lieu of 375
conviction for, a felony; 376

(12) Commission of an act that constitutes a felony in this 377
state, regardless of the jurisdiction in which the act was 378
committed; 379

(13) A plea of guilty to, a judicial finding of guilt of, or 380
a judicial finding of eligibility for intervention in lieu of 381
conviction for, a misdemeanor committed in the course of practice; 382

(14) A plea of guilty to, a judicial finding of guilt of, or 383
a judicial finding of eligibility for intervention in lieu of 384
conviction for, a misdemeanor involving moral turpitude; 385

(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;	386 387 388
(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;	389 390 391
(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;	392 393 394 395 396
(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;	397 398 399 400 401 402 403 404
(19) Violation of the conditions placed by the board on a certificate to practice as an acupuncturist;	405 406
(20) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;	407 408 409
(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	410 411 412 413 414 415 416

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;

(24) Practicing acupuncture by including the use of patent herbs or materia medica without obtaining the applicable certificate endorsement under section 4762.041 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 448
that judgment is based upon an adjudication on the merits. The 449
board shall have jurisdiction under these divisions in cases where 450
the trial court issues an order of dismissal upon technical or 451
procedural grounds. 452

(E) The sealing of conviction records by any court shall have 453
no effect upon a prior board order entered under the provisions of 454
this section or upon the board's jurisdiction to take action under 455
the provisions of this section if, based upon a plea of guilty, a 456
judicial finding of guilt, or a judicial finding of eligibility 457
for intervention in lieu of conviction, the board issued a notice 458
of opportunity for a hearing prior to the court's order to seal 459
the records. The board shall not be required to seal, destroy, 460
redact, or otherwise modify its records to reflect the court's 461
sealing of conviction records. 462

(F) For purposes of this division, any individual who holds a 463
certificate to practice issued under this chapter, or applies for 464
a certificate to practice, shall be deemed to have given consent 465
to submit to a mental or physical examination when directed to do 466
so in writing by the board and to have waived all objections to 467
the admissibility of testimony or examination reports that 468
constitute a privileged communication. 469

(1) In enforcing division (B)(5) of this section, the board, 470
upon a showing of a possible violation, may compel any individual 471
who holds a certificate to practice issued under this chapter or 472
who has applied for a certificate pursuant to this chapter to 473
submit to a mental examination, physical examination, including an 474
HIV test, or both a mental and physical examination. The expense 475
of the examination is the responsibility of the individual 476
compelled to be examined. Failure to submit to a mental or 477
physical examination or consent to an HIV test ordered by the 478
board constitutes an admission of the allegations against the 479

individual unless the failure is due to circumstances beyond the 480
individual's control, and a default and final order may be entered 481
without the taking of testimony or presentation of evidence. If 482
the board finds an acupuncturist unable to practice because of the 483
reasons set forth in division (B)(5) of this section, the board 484
shall require the acupuncturist to submit to care, counseling, or 485
treatment by physicians approved or designated by the board, as a 486
condition for an initial, continued, reinstated, or renewed 487
certificate to practice. An individual affected by this division 488
shall be afforded an opportunity to demonstrate to the board the 489
ability to resume practicing in compliance with acceptable and 490
prevailing standards of care. 491

(2) For purposes of division (B)(6) of this section, if the 492
board has reason to believe that any individual who holds a 493
certificate to practice issued under this chapter or any applicant 494
for a certificate suffers such impairment, the board may compel 495
the individual to submit to a mental or physical examination, or 496
both. The expense of the examination is the responsibility of the 497
individual compelled to be examined. Any mental or physical 498
examination required under this division shall be undertaken by a 499
treatment provider or physician qualified to conduct such 500
examination and chosen by the board. 501

Failure to submit to a mental or physical examination ordered 502
by the board constitutes an admission of the allegations against 503
the individual unless the failure is due to circumstances beyond 504
the individual's control, and a default and final order may be 505
entered without the taking of testimony or presentation of 506
evidence. If the board determines that the individual's ability to 507
practice is impaired, the board shall suspend the individual's 508
certificate or deny the individual's application and shall require 509
the individual, as a condition for an initial, continued, 510
reinstated, or renewed certificate, to submit to treatment. 511

Before being eligible to apply for reinstatement of a 512
certificate suspended under this division, the acupuncturist shall 513
demonstrate to the board the ability to resume practice in 514
compliance with acceptable and prevailing standards of care. The 515
demonstration shall include the following: 516

(a) Certification from a treatment provider approved under 517
section 4731.25 of the Revised Code that the individual has 518
successfully completed any required inpatient treatment; 519

(b) Evidence of continuing full compliance with an aftercare 520
contract or consent agreement; 521

(c) Two written reports indicating that the individual's 522
ability to practice has been assessed and that the individual has 523
been found capable of practicing according to acceptable and 524
prevailing standards of care. The reports shall be made by 525
individuals or providers approved by the board for making such 526
assessments and shall describe the basis for their determination. 527

The board may reinstate a certificate suspended under this 528
division after such demonstration and after the individual has 529
entered into a written consent agreement. 530

When the impaired acupuncturist resumes practice, the board 531
shall require continued monitoring of the acupuncturist. The 532
monitoring shall include monitoring of compliance with the written 533
consent agreement entered into before reinstatement or with 534
conditions imposed by board order after a hearing, and, upon 535
termination of the consent agreement, submission to the board for 536
at least two years of annual written progress reports made under 537
penalty of falsification stating whether the acupuncturist has 538
maintained sobriety. 539

(G) If the board's secretary and supervising member determine 540
that there is clear and convincing evidence that an acupuncturist 541
has violated division (B) of this section and that the 542

individual's continued practice presents a danger of immediate and 543
serious harm to the public, they may recommend that the board 544
suspend the individual's certificate to practice without a prior 545
hearing. Written allegations shall be prepared for consideration 546
by the board. 547

The board, upon review of the allegations and by an 548
affirmative vote of not fewer than six of its members, excluding 549
the secretary and supervising member, may suspend a certificate 550
without a prior hearing. A telephone conference call may be 551
utilized for reviewing the allegations and taking the vote on the 552
summary suspension. 553

The board shall issue a written order of suspension by 554
certified mail or in person in accordance with section 119.07 of 555
the Revised Code. The order shall not be subject to suspension by 556
the court during pendency of any appeal filed under section 119.12 557
of the Revised Code. If the acupuncturist requests an adjudicatory 558
hearing by the board, the date set for the hearing shall be within 559
fifteen days, but not earlier than seven days, after the 560
acupuncturist requests the hearing, unless otherwise agreed to by 561
both the board and the certificate holder. 562

A summary suspension imposed under this division shall remain 563
in effect, unless reversed on appeal, until a final adjudicative 564
order issued by the board pursuant to this section and Chapter 565
119. of the Revised Code becomes effective. The board shall issue 566
its final adjudicative order within sixty days after completion of 567
its hearing. Failure to issue the order within sixty days shall 568
result in dissolution of the summary suspension order, but shall 569
not invalidate any subsequent, final adjudicative order. 570

(H) If the board takes action under division (B)(11), (13), 571
or (14) of this section, and the judicial finding of guilt, guilty 572
plea, or judicial finding of eligibility for intervention in lieu 573
of conviction is overturned on appeal, upon exhaustion of the 574

criminal appeal, a petition for reconsideration of the order may 575
be filed with the board along with appropriate court documents. 576
Upon receipt of a petition and supporting court documents, the 577
board shall reinstate the certificate to practice. The board may 578
then hold an adjudication under Chapter 119. of the Revised Code 579
to determine whether the individual committed the act in question. 580
Notice of opportunity for hearing shall be given in accordance 581
with Chapter 119. of the Revised Code. If the board finds, 582
pursuant to an adjudication held under this division, that the 583
individual committed the act, or if no hearing is requested, it 584
may order any of the sanctions specified in division (B) of this 585
section. 586

(I) The certificate to practice of an acupuncturist and the 587
acupuncturist's practice in this state are automatically suspended 588
as of the date the acupuncturist pleads guilty to, is found by a 589
judge or jury to be guilty of, or is subject to a judicial finding 590
of eligibility for intervention in lieu of conviction in this 591
state or treatment or intervention in lieu of conviction in 592
another jurisdiction for any of the following criminal offenses in 593
this state or a substantially equivalent criminal offense in 594
another jurisdiction: aggravated murder, murder, voluntary 595
manslaughter, felonious assault, kidnapping, rape, sexual battery, 596
gross sexual imposition, aggravated arson, aggravated robbery, or 597
aggravated burglary. Continued practice after the suspension shall 598
be considered practicing without a certificate. 599

The board shall notify the individual subject to the 600
suspension by certified mail or in person in accordance with 601
section 119.07 of the Revised Code. If an individual whose 602
certificate is suspended under this division fails to make a 603
timely request for an adjudication under Chapter 119. of the 604
Revised Code, the board shall enter a final order permanently 605
revoking the individual's certificate to practice. 606

(J) In any instance in which the board is required by Chapter 607
119. of the Revised Code to give notice of opportunity for hearing 608
and the individual subject to the notice does not timely request a 609
hearing in accordance with section 119.07 of the Revised Code, the 610
board is not required to hold a hearing, but may adopt, by an 611
affirmative vote of not fewer than six of its members, a final 612
order that contains the board's findings. In the final order, the 613
board may order any of the sanctions identified under division (A) 614
or (B) of this section. 615

(K) Any action taken by the board under division (B) of this 616
section resulting in a suspension shall be accompanied by a 617
written statement of the conditions under which the 618
acupuncturist's certificate to practice may be reinstated. The 619
board shall adopt rules in accordance with Chapter 119. of the 620
Revised Code governing conditions to be imposed for reinstatement. 621
Reinstatement of a certificate suspended pursuant to division (B) 622
of this section requires an affirmative vote of not fewer than six 623
members of the board. 624

(L) When the board refuses to grant a certificate to practice 625
as an acupuncturist to an applicant, revokes an individual's 626
certificate, refuses to renew a certificate, or refuses to 627
reinstate an individual's certificate, the board may specify that 628
its action is permanent. An individual subject to a permanent 629
action taken by the board is forever thereafter ineligible to hold 630
a certificate to practice as an acupuncturist and the board shall 631
not accept an application for reinstatement of the certificate or 632
for issuance of a new certificate. 633

(M) Notwithstanding any other provision of the Revised Code, 634
all of the following apply: 635

(1) The surrender of a certificate to practice as an 636
acupuncturist issued under this chapter is not effective unless or 637
until accepted by the board. Reinstatement of a certificate 638

surrendered to the board requires an affirmative vote of not fewer 639
than six members of the board. 640

(2) An application made under this chapter for a certificate 641
may not be withdrawn without approval of the board. 642

(3) Failure by an individual to renew a certificate in 643
accordance with section 4762.06 of the Revised Code shall not 644
remove or limit the board's jurisdiction to take disciplinary 645
action under this section against the individual. 646

Sec. 4762.131. On receipt of a notice pursuant to section 647
~~2301.373 3123.43~~ of the Revised Code, the state medical board 648
shall comply with ~~that section~~ sections 3123.41 to 3123.50 of the 649
Revised Code and any applicable rules adopted under section 650
3123.63 of the Revised Code with respect to a certificate to 651
practice as an acupuncturist issued pursuant to this chapter. 652

Sec. 4762.19. The state medical board may adopt any rules 653
necessary to govern the practice of acupuncture, the use of patent 654
herbs or materia medica in the practice of acupuncture, the 655
supervisory relationship between acupuncturists and supervising 656
physicians, and the administration and enforcement of this 657
chapter. Rules adopted under this section shall be adopted in 658
accordance with Chapter 119. of the Revised Code. 659

Section 2. That existing sections 4762.01, 4762.03, 4762.05, 660
4762.06, 4762.08, 4762.10, 4762.13, 4762.131, and 4762.19 of the 661
Revised Code are hereby repealed. 662