

**As Introduced**

**129th General Assembly  
Regular Session  
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**H. B. No. 251**

**Representative Schuring**

**Cosponsors: Representatives Adams, J., Murray, Fedor, Phillips, Fende,  
Yuko, Hagan, R., Letson**

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**A B I L L**

To amend sections 4731.22, 4731.36, 4734.31, 4762.01, 1  
4762.02, 4762.03, 4762.031, 4762.04, 4762.05, 2  
4762.06, 4762.08, 4762.09, 4762.10, 4762.11, 3  
4762.12, 4762.13, 4762.131, 4762.132, 4762.14, 4  
4762.15, 4762.16, 4762.17, 4762.18, 4762.19, and 5  
4762.22 of the Revised Code to regulate the 6  
practice of Oriental medicine and to modify the 7  
laws governing the practice of acupuncture. 8

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

**Section 1.** That sections 4731.22, 4731.36, 4734.31, 4762.01, 9  
4762.02, 4762.03, 4762.031, 4762.04, 4762.05, 4762.06, 4762.08, 10  
4762.09, 4762.10, 4762.11, 4762.12, 4762.13, 4762.131, 4762.132, 11  
4762.14, 4762.15, 4762.16, 4762.17, 4762.18, 4762.19, and 4762.22 12  
of the Revised Code be amended to read as follows: 13

**Sec. 4731.22.** (A) The state medical board, by an affirmative 14  
vote of not fewer than six of its members, may revoke or may 15  
refuse to grant a certificate to a person found by the board to 16  
have committed fraud during the administration of the examination 17  
for a certificate to practice or to have committed fraud, 18

misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board.

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

(1) Permitting one's name or one's certificate to practice or certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports to a child fatality review board under sections 307.621 to 307.629 of the Revised Code and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of

the employee as described in division (B) of section 2305.33 of 50  
the Revised Code. Nothing in this division affects the immunity 51  
from civil liability conferred by that section upon a physician 52  
who makes either type of report in accordance with division (B) of 53  
that section. As used in this division, "employee," "employer," 54  
and "physician" have the same meanings as in section 2305.33 of 55  
the Revised Code. 56

(5) Making a false, fraudulent, deceptive, or misleading 57  
statement in the solicitation of or advertising for patients; in 58  
relation to the practice of medicine and surgery, osteopathic 59  
medicine and surgery, podiatric medicine and surgery, or a limited 60  
branch of medicine; or in securing or attempting to secure any 61  
certificate to practice or certificate of registration issued by 62  
the board. 63

As used in this division, "false, fraudulent, deceptive, or 64  
misleading statement" means a statement that includes a 65  
misrepresentation of fact, is likely to mislead or deceive because 66  
of a failure to disclose material facts, is intended or is likely 67  
to create false or unjustified expectations of favorable results, 68  
or includes representations or implications that in reasonable 69  
probability will cause an ordinarily prudent person to 70  
misunderstand or be deceived. 71

(6) A departure from, or the failure to conform to, minimal 72  
standards of care of similar practitioners under the same or 73  
similar circumstances, whether or not actual injury to a patient 74  
is established; 75

(7) Representing, with the purpose of obtaining compensation 76  
or other advantage as personal gain or for any other person, that 77  
an incurable disease or injury, or other incurable condition, can 78  
be permanently cured; 79

(8) The obtaining of, or attempting to obtain, money or 80

anything of value by fraudulent misrepresentations in the course of practice;	81 82
(9) 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;	83 84 85
(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;	86 87 88
(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 misdemeanor committed in the course of practice;	89 90 91
(12) 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;	92 93 94
(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 involving moral turpitude;	95 96 97
(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;	98 99 100
(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;	101 102
(16) Failure to pay license renewal fees specified in this chapter;	103 104
(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;	105 106 107 108
(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American	109 110

medical association, the American osteopathic association, the 111  
American podiatric medical association, or any other national 112  
professional organizations that the board specifies by rule. The 113  
state medical board shall obtain and keep on file current copies 114  
of the codes of ethics of the various national professional 115  
organizations. The individual whose certificate is being suspended 116  
or revoked shall not be found to have violated any provision of a 117  
code of ethics of an organization not appropriate to the 118  
individual's profession. 119

For purposes of this division, a "provision of a code of 120  
ethics of a national professional organization" does not include 121  
any provision that would preclude the making of a report by a 122  
physician of an employee's use of a drug of abuse, or of a 123  
condition of an employee other than one involving the use of a 124  
drug of abuse, to the employer of the employee as described in 125  
division (B) of section 2305.33 of the Revised Code. Nothing in 126  
this division affects the immunity from civil liability conferred 127  
by that section upon a physician who makes either type of report 128  
in accordance with division (B) of that section. As used in this 129  
division, "employee," "employer," and "physician" have the same 130  
meanings as in section 2305.33 of the Revised Code. 131

(19) Inability to practice according to acceptable and 132  
prevailing standards of care by reason of mental illness or 133  
physical illness, including, but not limited to, physical 134  
deterioration that adversely affects cognitive, motor, or 135  
perceptive skills. 136

In enforcing this division, the board, upon a showing of a 137  
possible violation, may compel any individual authorized to 138  
practice by this chapter or who has submitted an application 139  
pursuant to this chapter to submit to a mental examination, 140  
physical examination, including an HIV test, or both a mental and 141  
a physical examination. The expense of the examination is the 142

responsibility of the individual compelled to be examined. Failure 143  
to submit to a mental or physical examination or consent to an HIV 144  
test ordered by the board constitutes an admission of the 145  
allegations against the individual unless the failure is due to 146  
circumstances beyond the individual's control, and a default and 147  
final order may be entered without the taking of testimony or 148  
presentation of evidence. If the board finds an individual unable 149  
to practice because of the reasons set forth in this division, the 150  
board shall require the individual to submit to care, counseling, 151  
or treatment by physicians approved or designated by the board, as 152  
a condition for initial, continued, reinstated, or renewed 153  
authority to practice. An individual affected under this division 154  
shall be afforded an opportunity to demonstrate to the board the 155  
ability to resume practice in compliance with acceptable and 156  
prevailing standards under the provisions of the individual's 157  
certificate. For the purpose of this division, any individual who 158  
applies for or receives a certificate to practice under this 159  
chapter accepts the privilege of practicing in this state and, by 160  
so doing, shall be deemed to have given consent to submit to a 161  
mental or physical examination when directed to do so in writing 162  
by the board, and to have waived all objections to the 163  
admissibility of testimony or examination reports that constitute 164  
a privileged communication. 165

(20) Except when civil penalties are imposed under section 166  
4731.225 or 4731.281 of the Revised Code, and subject to section 167  
4731.226 of the Revised Code, violating or attempting to violate, 168  
directly or indirectly, or assisting in or abetting the violation 169  
of, or conspiring to violate, any provisions of this chapter or 170  
any rule promulgated by the board. 171

This division does not apply to a violation or attempted 172  
violation of, assisting in or abetting the violation of, or a 173  
conspiracy to violate, any provision of this chapter or any rule 174

adopted by the board that would preclude the making of a report by 175  
a physician of an employee's use of a drug of abuse, or of a 176  
condition of an employee other than one involving the use of a 177  
drug of abuse, to the employer of the employee as described in 178  
division (B) of section 2305.33 of the Revised Code. Nothing in 179  
this division affects the immunity from civil liability conferred 180  
by that section upon a physician who makes either type of report 181  
in accordance with division (B) of that section. As used in this 182  
division, "employee," "employer," and "physician" have the same 183  
meanings as in section 2305.33 of the Revised Code. 184

(21) The violation of section 3701.79 of the Revised Code or 185  
of any abortion rule adopted by the public health council pursuant 186  
to section 3701.341 of the Revised Code; 187

(22) Any of the following actions taken by the agency 188  
responsible for regulating the practice of medicine and surgery, 189  
osteopathic medicine and surgery, podiatric medicine and surgery, 190  
or the limited branches of medicine in another jurisdiction, for 191  
any reason other than the nonpayment of fees: the limitation, 192  
revocation, or suspension of an individual's license to practice; 193  
acceptance of an individual's license surrender; denial of a 194  
license; refusal to renew or reinstate a license; imposition of 195  
probation; or issuance of an order of censure or other reprimand; 196

(23) The violation of section 2919.12 of the Revised Code or 197  
the performance or inducement of an abortion upon a pregnant woman 198  
with actual knowledge that the conditions specified in division 199  
(B) of section 2317.56 of the Revised Code have not been satisfied 200  
or with a heedless indifference as to whether those conditions 201  
have been satisfied, unless an affirmative defense as specified in 202  
division (H)(2) of that section would apply in a civil action 203  
authorized by division (H)(1) of that section; 204

(24) The revocation, suspension, restriction, reduction, or 205  
termination of clinical privileges by the United States department 206

of defense or department of veterans affairs or the termination or 207  
suspension of a certificate of registration to prescribe drugs by 208  
the drug enforcement administration of the United States 209  
department of justice; 210

(25) Termination or suspension from participation in the 211  
medicare or medicaid programs by the department of health and 212  
human services or other responsible agency for any act or acts 213  
that also would constitute a violation of division (B)(2), (3), 214  
(6), (8), or (19) of this section; 215

(26) Impairment of ability to practice according to 216  
acceptable and prevailing standards of care because of habitual or 217  
excessive use or abuse of drugs, alcohol, or other substances that 218  
impair ability to practice. 219

For the purposes of this division, any individual authorized 220  
to practice by this chapter accepts the privilege of practicing in 221  
this state subject to supervision by the board. By filing an 222  
application for or holding a certificate to practice under this 223  
chapter, an individual shall be deemed to have given consent to 224  
submit to a mental or physical examination when ordered to do so 225  
by the board in writing, and to have waived all objections to the 226  
admissibility of testimony or examination reports that constitute 227  
privileged communications. 228

If it has reason to believe that any individual authorized to 229  
practice by this chapter or any applicant for certification to 230  
practice suffers such impairment, the board may compel the 231  
individual to submit to a mental or physical examination, or both. 232  
The expense of the examination is the responsibility of the 233  
individual compelled to be examined. Any mental or physical 234  
examination required under this division shall be undertaken by a 235  
treatment provider or physician who is qualified to conduct the 236  
examination and who is chosen by the board. 237

Failure to submit to a mental or physical examination ordered 238  
by the board constitutes an admission of the allegations against 239  
the individual unless the failure is due to circumstances beyond 240  
the individual's control, and a default and final order may be 241  
entered without the taking of testimony or presentation of 242  
evidence. If the board determines that the individual's ability to 243  
practice is impaired, the board shall suspend the individual's 244  
certificate or deny the individual's application and shall require 245  
the individual, as a condition for initial, continued, reinstated, 246  
or renewed certification to practice, to submit to treatment. 247

Before being eligible to apply for reinstatement of a 248  
certificate suspended under this division, the impaired 249  
practitioner shall demonstrate to the board the ability to resume 250  
practice in compliance with acceptable and prevailing standards of 251  
care under the provisions of the practitioner's certificate. The 252  
demonstration shall include, but shall not be limited to, the 253  
following: 254

(a) Certification from a treatment provider approved under 255  
section 4731.25 of the Revised Code that the individual has 256  
successfully completed any required inpatient treatment; 257

(b) Evidence of continuing full compliance with an aftercare 258  
contract or consent agreement; 259

(c) Two written reports indicating that the individual's 260  
ability to practice has been assessed and that the individual has 261  
been found capable of practicing according to acceptable and 262  
prevailing standards of care. The reports shall be made by 263  
individuals or providers approved by the board for making the 264  
assessments and shall describe the basis for their determination. 265

The board may reinstate a certificate suspended under this 266  
division after that demonstration and after the individual has 267  
entered into a written consent agreement. 268

When the impaired practitioner resumes practice, the board 269  
shall require continued monitoring of the individual. The 270  
monitoring shall include, but not be limited to, compliance with 271  
the written consent agreement entered into before reinstatement or 272  
with conditions imposed by board order after a hearing, and, upon 273  
termination of the consent agreement, submission to the board for 274  
at least two years of annual written progress reports made under 275  
penalty of perjury stating whether the individual has maintained 276  
sobriety. 277

(27) A second or subsequent violation of section 4731.66 or 278  
4731.69 of the Revised Code; 279

(28) Except as provided in division (N) of this section: 280

(a) Waiving the payment of all or any part of a deductible or 281  
copayment that a patient, pursuant to a health insurance or health 282  
care policy, contract, or plan that covers the individual's 283  
services, otherwise would be required to pay if the waiver is used 284  
as an enticement to a patient or group of patients to receive 285  
health care services from that individual; 286

(b) Advertising that the individual will waive the payment of 287  
all or any part of a deductible or copayment that a patient, 288  
pursuant to a health insurance or health care policy, contract, or 289  
plan that covers the individual's services, otherwise would be 290  
required to pay. 291

(29) Failure to use universal blood and body fluid 292  
precautions established by rules adopted under section 4731.051 of 293  
the Revised Code; 294

(30) Failure to provide notice to, and receive acknowledgment 295  
of the notice from, a patient when required by section 4731.143 of 296  
the Revised Code prior to providing nonemergency professional 297  
services, or failure to maintain that notice in the patient's 298  
file; 299

(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;	300 301 302 303
(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;	304 305 306 307 308 309 310
(33) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;	311 312 313
(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;	314 315 316 317 318 319 320 321 322
(35) Failure to supervise an <u>oriental medicine practitioner</u> <u>or</u> acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for <u>providing that</u> supervision <del>of an acupuncturist</del> ;	323 324 325 326
(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;	327 328 329
(37) Assisting suicide as defined in section 3795.01 of the	330

Revised Code;	331
(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;	332 333
(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;	334 335 336
(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code.	337 338 339
(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 individual 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.	340 341 342 343 344 345 346 347 348 349 350 351
If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or subsequent plea of guilty to, or judicial finding	352 353 354 355 356 357 358 359 360 361

of guilt of, a violation of that section shall provide for a 362  
suspension of the individual's certificate to practice for a 363  
period of at least one year or, if determined appropriate by the 364  
board, a more serious sanction involving the individual's 365  
certificate to practice. 366

(D) For purposes of divisions (B)(10), (12), and (14) of this 367  
section, the commission of the act may be established by a finding 368  
by the board, pursuant to an adjudication under Chapter 119. of 369  
the Revised Code, that the individual committed the act. The board 370  
does not have jurisdiction under those divisions if the trial 371  
court renders a final judgment in the individual's favor and that 372  
judgment is based upon an adjudication on the merits. The board 373  
has jurisdiction under those divisions if the trial court issues 374  
an order of dismissal upon technical or procedural grounds. 375

(E) The sealing of conviction records by any court shall have 376  
no effect upon a prior board order entered under this section or 377  
upon the board's jurisdiction to take action under this section 378  
if, based upon a plea of guilty, a judicial finding of guilt, or a 379  
judicial finding of eligibility for intervention in lieu of 380  
conviction, the board issued a notice of opportunity for a hearing 381  
prior to the court's order to seal the records. The board shall 382  
not be required to seal, destroy, redact, or otherwise modify its 383  
records to reflect the court's sealing of conviction records. 384

(F)(1) The board shall investigate evidence that appears to 385  
show that a person has violated any provision of this chapter or 386  
any rule adopted under it. Any person may report to the board in a 387  
signed writing any information that the person may have that 388  
appears to show a violation of any provision of this chapter or 389  
any rule adopted under it. In the absence of bad faith, any person 390  
who reports information of that nature or who testifies before the 391  
board in any adjudication conducted under Chapter 119. of the 392  
Revised Code shall not be liable in damages in a civil action as a 393

result of the report or testimony. Each complaint or allegation of 394  
a violation received by the board shall be assigned a case number 395  
and shall be recorded by the board. 396

(2) Investigations of alleged violations of this chapter or 397  
any rule adopted under it shall be supervised by the supervising 398  
member elected by the board in accordance with section 4731.02 of 399  
the Revised Code and by the secretary as provided in section 400  
4731.39 of the Revised Code. The president may designate another 401  
member of the board to supervise the investigation in place of the 402  
supervising member. No member of the board who supervises the 403  
investigation of a case shall participate in further adjudication 404  
of the case. 405

(3) In investigating a possible violation of this chapter or 406  
any rule adopted under this chapter, the board may administer 407  
oaths, order the taking of depositions, issue subpoenas, and 408  
compel the attendance of witnesses and production of books, 409  
accounts, papers, records, documents, and testimony, except that a 410  
subpoena for patient record information shall not be issued 411  
without consultation with the attorney general's office and 412  
approval of the secretary and supervising member of the board. 413  
Before issuance of a subpoena for patient record information, the 414  
secretary and supervising member shall determine whether there is 415  
probable cause to believe that the complaint filed alleges a 416  
violation of this chapter or any rule adopted under it and that 417  
the records sought are relevant to the alleged violation and 418  
material to the investigation. The subpoena may apply only to 419  
records that cover a reasonable period of time surrounding the 420  
alleged violation. 421

On failure to comply with any subpoena issued by the board 422  
and after reasonable notice to the person being subpoenaed, the 423  
board may move for an order compelling the production of persons 424  
or records pursuant to the Rules of Civil Procedure. 425

A subpoena issued by the board may be served by a sheriff, 426  
the sheriff's deputy, or a board employee designated by the board. 427  
Service of a subpoena issued by the board may be made by 428  
delivering a copy of the subpoena to the person named therein, 429  
reading it to the person, or leaving it at the person's usual 430  
place of residence. When the person being served is a person whose 431  
practice is authorized by this chapter, service of the subpoena 432  
may be made by certified mail, restricted delivery, return receipt 433  
requested, and the subpoena shall be deemed served on the date 434  
delivery is made or the date the person refuses to accept 435  
delivery. 436

A sheriff's deputy who serves a subpoena shall receive the 437  
same fees as a sheriff. Each witness who appears before the board 438  
in obedience to a subpoena shall receive the fees and mileage 439  
provided for under section 119.094 of the Revised Code. 440

(4) All hearings and investigations of the board shall be 441  
considered civil actions for the purposes of section 2305.252 of 442  
the Revised Code. 443

(5) Information received by the board pursuant to an 444  
investigation is confidential and not subject to discovery in any 445  
civil action. 446

The board shall conduct all investigations and proceedings in 447  
a manner that protects the confidentiality of patients and persons 448  
who file complaints with the board. The board shall not make 449  
public the names or any other identifying information about 450  
patients or complainants unless proper consent is given or, in the 451  
case of a patient, a waiver of the patient privilege exists under 452  
division (B) of section 2317.02 of the Revised Code, except that 453  
consent or a waiver of that nature is not required if the board 454  
possesses reliable and substantial evidence that no bona fide 455  
physician-patient relationship exists. 456

The board may share any information it receives pursuant to 457  
an investigation, including patient records and patient record 458  
information, with law enforcement agencies, other licensing 459  
boards, and other governmental agencies that are prosecuting, 460  
adjudicating, or investigating alleged violations of statutes or 461  
administrative rules. An agency or board that receives the 462  
information shall comply with the same requirements regarding 463  
confidentiality as those with which the state medical board must 464  
comply, notwithstanding any conflicting provision of the Revised 465  
Code or procedure of the agency or board that applies when it is 466  
dealing with other information in its possession. In a judicial 467  
proceeding, the information may be admitted into evidence only in 468  
accordance with the Rules of Evidence, but the court shall require 469  
that appropriate measures are taken to ensure that confidentiality 470  
is maintained with respect to any part of the information that 471  
contains names or other identifying information about patients or 472  
complainants whose confidentiality was protected by the state 473  
medical board when the information was in the board's possession. 474  
Measures to ensure confidentiality that may be taken by the court 475  
include sealing its records or deleting specific information from 476  
its records. 477

(6) On a quarterly basis, the board shall prepare a report 478  
that documents the disposition of all cases during the preceding 479  
three months. The report shall contain the following information 480  
for each case with which the board has completed its activities: 481

(a) The case number assigned to the complaint or alleged 482  
violation; 483

(b) The type of certificate to practice, if any, held by the 484  
individual against whom the complaint is directed; 485

(c) A description of the allegations contained in the 486  
complaint; 487

(d) The disposition of the case. 488

The report shall state how many cases are still pending and 489  
shall be prepared in a manner that protects the identity of each 490  
person involved in each case. The report shall be a public record 491  
under section 149.43 of the Revised Code. 492

(G) If the secretary and supervising member determine that 493  
there is clear and convincing evidence that an individual has 494  
violated division (B) of this section and that the individual's 495  
continued practice presents a danger of immediate and serious harm 496  
to the public, they may recommend that the board suspend the 497  
individual's certificate to practice without a prior hearing. 498  
Written allegations shall be prepared for consideration by the 499  
board. 500

The board, upon review of those allegations and by an 501  
affirmative vote of not fewer than six of its members, excluding 502  
the secretary and supervising member, may suspend a certificate 503  
without a prior hearing. A telephone conference call may be 504  
utilized for reviewing the allegations and taking the vote on the 505  
summary suspension. 506

The board shall issue a written order of suspension by 507  
certified mail or in person in accordance with section 119.07 of 508  
the Revised Code. The order shall not be subject to suspension by 509  
the court during pendency of any appeal filed under section 119.12 510  
of the Revised Code. If the individual subject to the summary 511  
suspension requests an adjudicatory hearing by the board, the date 512  
set for the hearing shall be within fifteen days, but not earlier 513  
than seven days, after the individual requests the hearing, unless 514  
otherwise agreed to by both the board and the individual. 515

Any summary suspension imposed under this division shall 516  
remain in effect, unless reversed on appeal, until a final 517  
adjudicative order issued by the board pursuant to this section 518

and Chapter 119. of the Revised Code becomes effective. The board 519  
shall issue its final adjudicative order within seventy-five days 520  
after completion of its hearing. A failure to issue the order 521  
within seventy-five days shall result in dissolution of the 522  
summary suspension order but shall not invalidate any subsequent, 523  
final adjudicative order. 524

(H) If the board takes action under division (B)(9), (11), or 525  
(13) of this section and the judicial finding of guilt, guilty 526  
plea, or judicial finding of eligibility for intervention in lieu 527  
of conviction is overturned on appeal, upon exhaustion of the 528  
criminal appeal, a petition for reconsideration of the order may 529  
be filed with the board along with appropriate court documents. 530  
Upon receipt of a petition of that nature and supporting court 531  
documents, the board shall reinstate the individual's certificate 532  
to practice. The board may then hold an adjudication under Chapter 533  
119. of the Revised Code to determine whether the individual 534  
committed the act in question. Notice of an opportunity for a 535  
hearing shall be given in accordance with Chapter 119. of the 536  
Revised Code. If the board finds, pursuant to an adjudication held 537  
under this division, that the individual committed the act or if 538  
no hearing is requested, the board may order any of the sanctions 539  
identified under division (B) of this section. 540

(I) The certificate to practice issued to an individual under 541  
this chapter and the individual's practice in this state are 542  
automatically suspended as of the date of the individual's second 543  
or subsequent plea of guilty to, or judicial finding of guilt of, 544  
a violation of section 2919.123 of the Revised Code, or the date 545  
the individual pleads guilty to, is found by a judge or jury to be 546  
guilty of, or is subject to a judicial finding of eligibility for 547  
intervention in lieu of conviction in this state or treatment or 548  
intervention in lieu of conviction in another jurisdiction for any 549  
of the following criminal offenses in this state or a 550

substantially equivalent criminal offense in another jurisdiction: 551  
aggravated murder, murder, voluntary manslaughter, felonious 552  
assault, kidnapping, rape, sexual battery, gross sexual 553  
imposition, aggravated arson, aggravated robbery, or aggravated 554  
burglary. Continued practice after suspension shall be considered 555  
practicing without a certificate. 556

The board shall notify the individual subject to the 557  
suspension by certified mail or in person in accordance with 558  
section 119.07 of the Revised Code. If an individual whose 559  
certificate is automatically suspended under this division fails 560  
to make a timely request for an adjudication under Chapter 119. of 561  
the Revised Code, the board shall do whichever of the following is 562  
applicable: 563

(1) If the automatic suspension under this division is for a 564  
second or subsequent plea of guilty to, or judicial finding of 565  
guilt of, a violation of section 2919.123 of the Revised Code, the 566  
board shall enter an order suspending the individual's certificate 567  
to practice for a period of at least one year or, if determined 568  
appropriate by the board, imposing a more serious sanction 569  
involving the individual's certificate to practice. 570

(2) In all circumstances in which division (I)(1) of this 571  
section does not apply, enter a final order permanently revoking 572  
the individual's certificate to practice. 573

(J) If the board is required by Chapter 119. of the Revised 574  
Code to give notice of an opportunity for a hearing and if the 575  
individual subject to the notice does not timely request a hearing 576  
in accordance with section 119.07 of the Revised Code, the board 577  
is not required to hold a hearing, but may adopt, by an 578  
affirmative vote of not fewer than six of its members, a final 579  
order that contains the board's findings. In that final order, the 580  
board may order any of the sanctions identified under division (A) 581  
or (B) of this section. 582

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

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

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

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

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

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

(N) Sanctions shall not be imposed under division (B)(28) of

this section against any person who waives deductibles and 614  
copayments as follows: 615

(1) In compliance with the health benefit plan that expressly 616  
allows such a practice. Waiver of the deductibles or copayments 617  
shall be made only with the full knowledge and consent of the plan 618  
purchaser, payer, and third-party administrator. Documentation of 619  
the consent shall be made available to the board upon request. 620

(2) For professional services rendered to any other person 621  
authorized to practice pursuant to this chapter, to the extent 622  
allowed by this chapter and rules adopted by the board. 623

(O) Under the board's investigative duties described in this 624  
section and subject to division (F) of this section, the board 625  
shall develop and implement a quality intervention program 626  
designed to improve through remedial education the clinical and 627  
communication skills of individuals authorized under this chapter 628  
to practice medicine and surgery, osteopathic medicine and 629  
surgery, and podiatric medicine and surgery. In developing and 630  
implementing the quality intervention program, the board may do 631  
all of the following: 632

(1) Offer in appropriate cases as determined by the board an 633  
educational and assessment program pursuant to an investigation 634  
the board conducts under this section; 635

(2) Select providers of educational and assessment services, 636  
including a quality intervention program panel of case reviewers; 637

(3) Make referrals to educational and assessment service 638  
providers and approve individual educational programs recommended 639  
by those providers. The board shall monitor the progress of each 640  
individual undertaking a recommended individual educational 641  
program. 642

(4) Determine what constitutes successful completion of an 643  
individual educational program and require further monitoring of 644

the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

**Sec. 4731.36.** (A) Sections 4731.01 to 4731.47 of the Revised Code shall not prohibit service in case of emergency, domestic administration of family remedies, or provision of assistance to another individual who is self-administering drugs.

Sections 4731.01 to 4731.47 of the Revised Code shall not apply to any of the following:

(1) A commissioned medical officer of the United States armed forces, as defined in section 5903.11 of the Revised Code, or an employee of the veterans administration of the United States or the United States public health service in the discharge of the officer's or employee's professional duties;

(2) A dentist authorized under Chapter 4715. of the Revised Code to practice dentistry when engaged exclusively in the practice of dentistry or when administering anesthetics in the practice of dentistry;

(3) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein when providing consultation to an individual holding a certificate to practice issued under this chapter who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation, if one of the following applies:

(a) The physician or surgeon does not provide consultation in

this state on a regular or frequent basis. 675

(b) The physician or surgeon provides the consultation 676  
without compensation of any kind, direct or indirect, for the 677  
consultation. 678

(c) The consultation is part of the curriculum of a medical 679  
school or osteopathic medical school of this state or a program 680  
described in division (A)(2) of section 4731.291 of the Revised 681  
Code. 682

(4) A physician or surgeon in another state or territory who 683  
is a legal practitioner of medicine or surgery therein and 684  
provided services to a patient in that state or territory, when 685  
providing, not later than one year after the last date services 686  
were provided in another state or territory, follow-up services in 687  
person or through the use of any communication, including oral, 688  
written, or electronic communication, in this state to the patient 689  
for the same condition; 690

(5) A physician or surgeon residing on the border of a 691  
contiguous state and authorized under the laws thereof to practice 692  
medicine and surgery therein, whose practice extends within the 693  
limits of this state. Such practitioner shall not either in person 694  
or through the use of any communication, including oral, written, 695  
or electronic communication, open an office or appoint a place to 696  
see patients or receive calls within the limits of this state. 697

(6) A board, committee, or corporation engaged in the conduct 698  
described in division (A) of section 2305.251 of the Revised Code 699  
when acting within the scope of the functions of the board, 700  
committee, or corporation; 701

(7) The conduct of an independent review organization 702  
accredited by the superintendent of insurance under section 703  
3901.80 of the Revised Code for the purpose of external reviews 704  
conducted under sections 1751.84, 1751.85, 3923.67, 3923.68, 705

3923.76, and 3923.77 of the Revised Code. 706

(B) Sections 4731.51 to 4731.61 of the Revised Code do not 707  
apply to any graduate of a podiatric school or college while 708  
performing those acts that may be prescribed by or incidental to 709  
participation in an accredited podiatric internship, residency, or 710  
fellowship program situated in this state approved by the state 711  
medical board. 712

(C) This chapter does not apply to an oriental medicine 713  
practitioner or acupuncturist who complies with Chapter 4762. of 714  
the Revised Code. 715

(D) This chapter does not prohibit the administration of 716  
drugs by any of the following: 717

(1) An individual who is licensed or otherwise specifically 718  
authorized by the Revised Code to administer drugs; 719

(2) An individual who is not licensed or otherwise 720  
specifically authorized by the Revised Code to administer drugs, 721  
but is acting pursuant to the rules for delegation of medical 722  
tasks adopted under section 4731.053 of the Revised Code; 723

(3) An individual specifically authorized to administer drugs 724  
pursuant to a rule adopted under the Revised Code that is in 725  
effect on the effective date of this amendment, as long as the 726  
rule remains in effect, specifically authorizing an individual to 727  
administer drugs. 728

(E) The exemptions described in divisions (A)(3), (4), and 729  
(5) of this section do not apply to a physician or surgeon whose 730  
certificate to practice issued under this chapter is under 731  
suspension or has been revoked or permanently revoked by action of 732  
the state medical board. 733

**Sec. 4734.31.** (A) The state chiropractic board may take any 734  
of the actions specified in division (B) of this section against 735

an individual who has applied for or holds a license to practice 736  
chiropractic in this state if any of the reasons specified in 737  
division (C) of this section for taking action against an 738  
individual are applicable. Except as provided in division (D) of 739  
this section, actions taken against an individual shall be taken 740  
in accordance with Chapter 119. of the Revised Code. The board may 741  
specify that any action it takes is a permanent action. The 742  
board's authority to take action against an individual is not 743  
removed or limited by the individual's failure to renew a license. 744

(B) In its imposition of sanctions against an individual, the 745  
board may do any of the following: 746

(1) Refuse to issue, renew, restore, or reinstate a license 747  
to practice chiropractic or a certificate to practice acupuncture; 748

(2) Reprimand or censure a license holder; 749

(3) Place limits, restrictions, or probationary conditions on 750  
a license holder's practice; 751

(4) Impose a civil fine of not more than five thousand 752  
dollars according to a schedule of fines specified in rules that 753  
the board shall adopt in accordance with Chapter 119. of the 754  
Revised Code. 755

(5) Suspend a license to practice chiropractic or a 756  
certificate to practice acupuncture for a limited or indefinite 757  
period; 758

(6) Revoke a license to practice chiropractic or a 759  
certificate to practice acupuncture. 760

(C) The board may take the actions specified in division (B) 761  
of this section for any of the following reasons: 762

(1) A plea of guilty to, a judicial finding of guilt of, or a 763  
judicial finding of eligibility for intervention in lieu of 764  
conviction for, a felony in any jurisdiction, in which case a 765

certified copy of the court record shall be conclusive evidence of 766  
the conviction; 767

(2) Commission of an act that constitutes a felony in this 768  
state, regardless of the jurisdiction in which the act was 769  
committed; 770

(3) A plea of guilty to, a judicial finding of guilt of, or a 771  
judicial finding of eligibility for intervention in lieu of 772  
conviction for, a misdemeanor involving moral turpitude, as 773  
determined by the board, in which case a certified copy of the 774  
court record shall be conclusive evidence of the matter; 775

(4) Commission of an act involving moral turpitude that 776  
constitutes a misdemeanor in this state, regardless of the 777  
jurisdiction in which the act was committed; 778

(5) A plea of guilty to, a judicial finding of guilt of, or a 779  
judicial finding of eligibility for intervention in lieu of 780  
conviction for, a misdemeanor committed in the course of practice, 781  
in which case a certified copy of the court record shall be 782  
conclusive evidence of the matter; 783

(6) Commission of an act in the course of practice that 784  
constitutes a misdemeanor in this state, regardless of the 785  
jurisdiction in which the act was committed; 786

(7) A violation or attempted violation of this chapter or the 787  
rules adopted under it governing the practice of chiropractic and 788  
the practice of acupuncture by a chiropractor licensed under this 789  
chapter; 790

(8) Failure to cooperate in an investigation conducted by the 791  
board, including failure to comply with a subpoena or order issued 792  
by the board or failure to answer truthfully a question presented 793  
by the board at a deposition or in written interrogatories, except 794  
that failure to cooperate with an investigation shall not 795  
constitute grounds for discipline under this section if the board 796

or a court of competent jurisdiction has issued an order that 797  
either quashes a subpoena or permits the individual to withhold 798  
the testimony or evidence in issue; 799

(9) Engaging in an ongoing professional relationship with a 800  
person or entity that violates any provision of this chapter or 801  
the rules adopted under it, unless the chiropractor makes a good 802  
faith effort to have the person or entity comply with the 803  
provisions; 804

(10) Retaliating against a chiropractor for the 805  
chiropractor's reporting to the board or any other agency with 806  
jurisdiction any violation of the law or for cooperating with the 807  
board of another agency in the investigation of any violation of 808  
the law; 809

(11) Aiding, abetting, assisting, counseling, or conspiring 810  
with any person in that person's violation of any provision of 811  
this chapter or the rules adopted under it, including the practice 812  
of chiropractic without a license, the practice of acupuncture 813  
without a certificate, or aiding, abetting, assisting, counseling, 814  
or conspiring with any person in that person's unlicensed practice 815  
of any other health care profession that has licensing 816  
requirements; 817

(12) With respect to a report or record that is made, filed, 818  
or signed in connection with the practice of chiropractic or 819  
acupuncture, knowingly making or filing a report or record that is 820  
false, intentionally or negligently failing to file a report or 821  
record required by federal, state, or local law or willfully 822  
impeding or obstructing the required filing, or inducing another 823  
person to engage in any such acts; 824

(13) Making a false, fraudulent, or deceitful statement to 825  
the board or any agent of the board during any investigation or 826  
other official proceeding conducted by the board under this 827

chapter or in any filing that must be submitted to the board;	828
(14) Attempting to secure a license to practice chiropractic or certificate to practice acupuncture or to corrupt the outcome of an official board proceeding through bribery or any other improper means;	829 830 831 832
(15) Willfully obstructing or hindering the board or any agent of the board in the discharge of the board's duties;	833 834
(16) Habitually using drugs or intoxicants to the extent that the person is rendered unfit for the practice of chiropractic or acupuncture;	835 836 837
(17) Inability to practice chiropractic or acupuncture according to acceptable and prevailing standards of care by reason of chemical dependency, mental illness, or physical illness, including conditions in which physical deterioration has adversely affected the person's cognitive, motor, or perceptive skills and conditions in which a chiropractor's continued practice may pose a danger to the chiropractor or the public;	838 839 840 841 842 843 844
(18) Any act constituting gross immorality relative to the person's practice of chiropractic or acupuncture, including acts involving sexual abuse, sexual misconduct, or sexual exploitation;	845 846 847
(19) Exploiting a patient for personal or financial gain;	848
(20) Failing to maintain proper, accurate, and legible records in the English language documenting each patient's care, including, as appropriate, records of the following: dates of treatment, services rendered, examinations, tests, x-ray reports, referrals, and the diagnosis or clinical impression and clinical treatment plan provided to the patient;	849 850 851 852 853 854
(21) Except as otherwise required by the board or by law, disclosing patient information gained during the chiropractor's professional relationship with a patient without obtaining the	855 856 857

patient's authorization for the disclosure;	858
(22) Commission of willful or gross malpractice, or willful or gross neglect, in the practice of chiropractic or acupuncture;	859 860
(23) Failing to perform or negligently performing an act recognized by the board as a general duty or the exercise of due care in the practice of chiropractic or acupuncture, regardless of whether injury results to a patient from the failure to perform or negligent performance of the act;	861 862 863 864 865
(24) Engaging in any conduct or practice that impairs or may impair the ability to practice chiropractic or acupuncture safely and skillfully;	866 867 868
(25) Practicing, or claiming to be capable of practicing, beyond the scope of the practice of chiropractic or acupuncture as established under this chapter and the rules adopted under this chapter;	869 870 871 872
(26) Accepting and performing professional responsibilities as a chiropractor or chiropractor with a certificate to practice acupuncture when not qualified to perform those responsibilities, if the person knew or had reason to know that the person was not qualified to perform them;	873 874 875 876 877
(27) Delegating any of the professional responsibilities of a chiropractor or chiropractor with a certificate to practice acupuncture to an employee or other individual when the delegating chiropractor knows or had reason to know that the employee or other individual is not qualified by training, experience, or professional licensure to perform the responsibilities;	878 879 880 881 882 883
(28) Delegating any of the professional responsibilities of a chiropractor or chiropractor with a certificate to practice acupuncture to an employee or other individual in a negligent manner or failing to provide proper supervision of the employee or other individual to whom the responsibilities are delegated;	884 885 886 887 888

(29) Failing to refer a patient to another health care practitioner for consultation or treatment when the chiropractor knows or has reason to know that the referral is in the best interest of the patient;	889 890 891 892
(30) Obtaining or attempting to obtain any fee or other advantage by fraud or misrepresentation;	893 894
(31) Making misleading, deceptive, false, or fraudulent representations in the practice of chiropractic or acupuncture;	895 896
(32) Being guilty of false, fraudulent, deceptive, or misleading advertising or other solicitations for patients or knowingly having professional connection with any person that advertises or solicits for patients in such a manner;	897 898 899 900
(33) Violation of a provision of any code of ethics established or adopted by the board under section 4734.16 of the Revised Code;	901 902 903
(34) Failing to meet the examination requirements for receipt of a license specified under section 4734.20 of the Revised Code;	904 905
(35) Actions taken for any reason, other than nonpayment of fees, by the chiropractic or acupuncture licensing authority of another state or country;	906 907 908
(36) Failing to maintain clean and sanitary conditions at the clinic, office, or other place in which chiropractic services or acupuncture services are provided;	909 910 911
(37) Except as provided in division (G) of this section:	912
(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the chiropractor's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that chiropractor;	913 914 915 916 917 918

(b) Advertising that the chiropractor will waive the payment 919  
of all or any part of a deductible or copayment that a patient, 920  
pursuant to a health insurance or health care policy, contract, or 921  
plan that covers the chiropractor's services, otherwise would be 922  
required to pay. 923

(38) Failure to supervise an oriental medicine practitioner 924  
performing acupuncture or an acupuncturist in accordance with the 925  
provisions of section 4762.11 of the Revised Code that are 926  
applicable to ~~the a~~ supervising chiropractor ~~of an acupuncturist~~. 927

(D) The adjudication requirements of Chapter 119. of the 928  
Revised Code apply to the board when taking actions against an 929  
individual under this section, except as follows: 930

(1) An applicant is not entitled to an adjudication for 931  
failing to meet the conditions specified under section 4734.20 of 932  
the Revised Code for receipt of a license that involve the board's 933  
examination on jurisprudence or the examinations of the national 934  
board of chiropractic examiners. 935

(2) A person is not entitled to an adjudication if the person 936  
fails to make a timely request for a hearing, in accordance with 937  
Chapter 119. of the Revised Code. 938

(3) In lieu of an adjudication, the board may accept the 939  
surrender of a license to practice chiropractic or certificate to 940  
practice acupuncture from a chiropractor. 941

(4) In lieu of an adjudication, the board may enter into a 942  
consent agreement with an individual to resolve an allegation of a 943  
violation of this chapter or any rule adopted under it. A consent 944  
agreement, when ratified by the board, shall constitute the 945  
findings and order of the board with respect to the matter 946  
addressed in the agreement. If the board refuses to ratify a 947  
consent agreement, the admissions and findings contained in the 948  
consent agreement shall be of no force or effect. 949

(E) This section does not require the board to hire, contract 950  
with, or retain the services of an expert witness when the board 951  
takes action against a chiropractor concerning compliance with 952  
acceptable and prevailing standards of care in the practice of 953  
chiropractic or acupuncture. As part of an action taken concerning 954  
compliance with acceptable and prevailing standards of care, the 955  
board may rely on the knowledge of its members for purposes of 956  
making a determination of compliance, notwithstanding any expert 957  
testimony presented by the chiropractor that contradicts the 958  
knowledge and opinions of the members of the board. 959

(F) The sealing of conviction records by a court shall have 960  
no effect on a prior board order entered under this section or on 961  
the board's jurisdiction to take action under this section if, 962  
based on a plea of guilty, a judicial finding of guilt, or a 963  
judicial finding of eligibility for intervention in lieu of 964  
conviction, the board issued a notice of opportunity for a hearing 965  
prior to the court's order to seal the records. The board shall 966  
not be required to seal, destroy, redact, or otherwise modify its 967  
records to reflect the court's sealing of conviction records. 968

(G) Actions shall not be taken pursuant to division (C)(37) 969  
of this section against any chiropractor who waives deductibles 970  
and copayments as follows: 971

(1) In compliance with the health benefit plan that expressly 972  
allows a practice of that nature. Waiver of the deductibles or 973  
copayments shall be made only with the full knowledge and consent 974  
of the plan purchaser, payer, and third-party administrator. 975  
Documentation of the consent shall be made available to the board 976  
upon request. 977

(2) For professional services rendered to any other person 978  
licensed pursuant to this chapter, to the extent allowed by this 979  
chapter and the rules of the board. 980

Sec. 4762.01. As used in this chapter: 981

(A) "Acupuncture" means a form of health care performed by 982  
the insertion and removal of specialized needles, with or without 983  
the ~~application use of moxibustion or electrical stimulation~~ 984  
supplemental techniques, to specific areas of the human body. 985

(B) "Chiropractor" means an individual licensed under Chapter 986  
4734. of the Revised Code to engage in the practice of 987  
chiropractic. 988

(C) "Herbal therapy" means the use of herbs, vitamins, 989  
minerals, organ extracts, homeopathics, or physiologic materials 990  
for energetic or physiologic therapy. 991

(D) "Moxibustion" means the use of an herbal heat source on 992  
one or more acupuncture points. 993

~~(D)~~(E) "Oriental medicine" means a form of health care in 994  
which acupuncture is performed with or without the use of herbal 995  
therapy. "Physician" means an individual authorized under Chapter 996  
4731. of the Revised Code to practice medicine and surgery, 997  
osteopathic medicine and surgery, or podiatry. 998

(F) "Supplemental techniques" means the use of traditional 999  
and modern oriental therapeutics, heat therapy, moxibustion, 1000  
acupressure and other forms of Chinese massage, and counseling 1001  
that includes the provision of information regarding lifestyle 1002  
modifications and the therapeutic use of foods and supplements, 1003  
including homeopathics, glandulars, vitamins, and minerals. 1004

Sec. 4762.02. (A) Except as provided in division (B), (C), or 1005  
(D) of this section, no person shall engage do either of the 1006  
following: 1007

(1) Engage in the practice of oriental medicine unless the 1008  
person holds a valid certificate to practice as an oriental 1009

medicine practitioner issued by the state medical board under this 1010  
chapter; 1011

(2) Engage in the practice of acupuncture unless the person 1012  
holds a valid certificate to practice as an acupuncturist issued 1013  
~~by the state medical board~~ under this chapter. 1014

(B) Division (A) of this section does not apply to ~~the~~ 1015  
~~following:~~ 1016

~~(1) A a physician.~~ 1017

~~(2)(C) Division (A)(1) of this section does not apply to the~~ 1018  
following: 1019

(1) A person who engages in activities included in the 1020  
practice of oriental medicine as part of a training program in 1021  
oriental medicine, but only if both of the following conditions 1022  
are met: 1023

(a) The training program is operated by an educational 1024  
institution that holds an effective certificate of authorization 1025  
issued by the Ohio board of regents under section 1713.02 of the 1026  
Revised Code or a school that holds an effective certificate of 1027  
registration issued by the state board of career colleges and 1028  
schools under section 3332.05 of the Revised Code. 1029

(b) The person engages in the activities under the general 1030  
supervision of an oriental medicine practitioner who holds a 1031  
certificate to practice issued under this chapter and is not 1032  
practicing within the supervisory period required by section 1033  
4762.10 of the Revised Code. 1034

(2) To the extent that acupuncture is a component of oriental 1035  
medicine, an acupuncturist holding a certificate to practice 1036  
issued under this chapter. 1037

(D) Division (A)(2) of this section does not apply to the 1038  
following: 1039

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

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

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

~~(3)(2) An oriental medicine practitioner holding a certificate to practice issued under this chapter.~~

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

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

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

(2) ~~Evidence~~ (a) For an applicant seeking a certificate to practice as an oriental medicine practitioner, evidence satisfactory to the board that the applicant holds a current and active designation from the national certification commission for

acupuncture and oriental medicine as either a diplomate in 1070  
oriental medicine or a diplomate of acupuncture and Chinese 1071  
herbology; 1072

(b) For an applicant seeking a certificate to practice as an 1073  
acupuncturist, evidence satisfactory to the board that the 1074  
applicant ~~has been designated as a diplomate in acupuncture by~~ 1075  
holds a current and active designation from the national 1076  
certification commission for acupuncture and oriental medicine and 1077  
~~that the designation is current and active as a diplomate in~~ 1078  
acupuncture; 1079

(3) Any other information the board requires. 1080

(B) The board shall review all applications received under 1081  
this section. The board shall determine whether an applicant meets 1082  
the requirements to receive a certificate to practice not later 1083  
than sixty days after receiving a complete application. The 1084  
affirmative vote of not fewer than six members of the board is 1085  
required to determine that an applicant meets the requirements for 1086  
a certificate. 1087

(C) At the time of making application for a certificate to 1088  
practice, the applicant shall pay the board a fee of one hundred 1089  
dollars, no part of which shall be returned. 1090

**Sec. 4762.031.** In addition to any other eligibility 1091  
requirement set forth in this chapter, each applicant for a 1092  
certificate to practice ~~as an acupuncturist~~ issued under this 1093  
chapter shall comply with sections 4776.01 to 4776.04 of the 1094  
Revised Code. The state medical board shall not grant to an 1095  
applicant a certificate to practice ~~as an acupuncturist~~ unless the 1096  
board, in its discretion, decides that the results of the criminal 1097  
records check do not make the applicant ineligible for a 1098  
certificate issued pursuant to section 4762.04 of the Revised 1099  
Code. 1100

**Sec. 4762.04.** If the state medical board determines under 1101  
section 4762.03 of the Revised Code that an applicant meets the 1102  
requirements for a certificate to practice ~~as an acupuncturist~~ 1103  
issued under this chapter, the secretary of the board shall 1104  
register the applicant as an oriental medicine practitioner or 1105  
acupuncturist, as appropriate, and issue to the applicant a 1106  
certificate to practice ~~as an acupuncturist~~. The certificate shall 1107  
expire biennially and may be renewed in accordance with section 1108  
4762.06 of the Revised Code. 1109

**Sec. 4762.05.** Upon application by the holder of a certificate 1110  
to practice ~~as an acupuncturist~~ issued under this chapter, the 1111  
state medical board shall issue a duplicate certificate to replace 1112  
one that is missing or damaged, to reflect a name change, or for 1113  
any other reasonable cause. The fee for a duplicate certificate is 1114  
thirty-five dollars. 1115

**Sec. 4762.06.** (A) A person seeking to renew a certificate to 1116  
practice ~~as an acupuncturist~~ issued under this chapter shall, on 1117  
or before the thirty-first day of January of each even-numbered 1118  
year, apply for renewal of the certificate. The state medical 1119  
board shall send renewal notices at least one month prior to the 1120  
expiration date. 1121

Applications shall be submitted to the board on forms the 1122  
board shall prescribe and supply. Each application shall be 1123  
accompanied by a biennial renewal fee of one hundred dollars. 1124

The applicant shall report any criminal offense that 1125  
constitutes grounds for refusing to issue a certificate under 1126  
section 4762.13 of the Revised Code to which the applicant has 1127  
pleaded guilty, of which the applicant has been found guilty, or 1128  
for which the applicant has been found eligible for intervention 1129  
in lieu of conviction, since last signing an application for a 1130

certificate to practice ~~as an acupuncturist~~ issued under this 1131  
chapter. 1132

(B)(1) To be eligible for renewal, an ~~acupuncturist must~~ 1133  
applicant shall do all of the following: 1134

(a)(i) For renewal of an oriental medicine certificate, 1135  
certify to the board that the oriental medicine practitioner holds 1136  
a current and active designation from the national certification 1137  
commission for acupuncture and oriental medicine as either a 1138  
diplomate in oriental medicine or a diplomate of acupuncture and 1139  
Chinese herbology; 1140

(ii) For renewal of an acupuncture certificate, certify to 1141  
the board that the acupuncturist ~~has maintained the~~ 1142  
~~acupuncturist's~~ holds a current and active designation as ~~a~~ 1143  
~~diplomate in acupuncture by~~ from the national certification 1144  
commission for acupuncture and oriental medicine as a diplomate in 1145  
acupuncture; 1146

(b) Except as provided in division (B)(2) of this section, 1147  
certify to the board that the applicant has successfully completed 1148  
one six-hour course in herb and drug interaction approved by the 1149  
national certification commission for acupuncture and oriental 1150  
medicine in the six years immediately preceding the certificate's 1151  
expiration date; 1152

(c) Except as provided in division (B)(2) of this section and 1153  
only for the initial renewal of a certificate to practice, certify 1154  
to the board that the applicant has successfully completed one 1155  
course on federal food and drug administration dispensary and 1156  
compounding guidelines and procedures. 1157

(2) An acupuncturist who seeks to renew a certificate to 1158  
practice on or before January 31, 2012, shall certify to the board 1159  
the educational requirements under divisions (B)(1)(b) and (c) of 1160  
this section on or before January 31, 2014. 1161

(C) If an applicant submits a complete renewal application 1162  
and qualifies for renewal pursuant to division (B) of this 1163  
section, the board shall issue to the applicant a renewed 1164  
certificate to practice ~~as an acupuncturist~~. 1165

(D) A certificate to practice that is not renewed on or 1166  
before its expiration date is automatically suspended on its 1167  
expiration date. If a certificate has been suspended pursuant to 1168  
this division for two years or less, the board shall reinstate the 1169  
certificate upon an applicant's submission of a renewal 1170  
application, the biennial renewal fee, and the applicable monetary 1171  
penalty. The penalty for reinstatement is twenty-five dollars. If 1172  
a certificate has been suspended pursuant to this division for 1173  
more than two years, it may be restored upon an applicant's 1174  
submission of a restoration application, the biennial registration 1175  
fee, and the applicable monetary penalty and compliance with 1176  
sections 4776.01 to 4776.04 of the Revised Code. The board shall 1177  
not restore a certificate to practice unless the board, in its 1178  
discretion, decides that the results of the criminal records check 1179  
do not make the applicant ineligible for a certificate issued 1180  
pursuant to section 4762.04 of the Revised Code. The penalty for 1181  
restoration is fifty dollars. 1182

**Sec. 4762.08.** (A) A person who holds a certificate to 1183  
practice as an oriental medicine practitioner issued under this 1184  
chapter may use the following titles, initials, or abbreviations, 1185  
or the equivalent of such titles, initials, or abbreviations, to 1186  
identify the person as an oriental medicine practitioner: 1187  
"Oriental Medicine Practitioner," "Licensed Oriental Medicine 1188  
Practitioner," "L.O.M.," "Diplomate in Oriental Medicine 1189  
(NCCAOM)," "Dipl. O.M. (NCCAOM)," "National Board Certified in 1190  
Oriental Medicine (NCCAOM)," "Acupuncturist," "Licensed 1191  
Acupuncturist," "L.Ac. and L.C.H.," "Diplomate of Acupuncture and 1192  
Chinese Herbology (NCCAOM)," "Dipl. Ac. and Dipl. C.H. (NCCAOM)," 1193

or "National Board Certified in Acupuncture and Chinese Herbology (NCCAOM)." The person shall not use other titles, initials, or abbreviations in conjunction with the person's practice of oriental medicine, including the title "doctor." 1194  
1195  
1196  
1197

(B) A person who holds a certificate to practice as an acupuncturist issued under this chapter may use the following titles, initials, or abbreviations, or the equivalent of such titles, initials, or abbreviations, to identify the person as an acupuncturist: "Acupuncturist," "Licensed Acupuncturist," "L.Ac.," "Diplomate ~~of~~ in Acupuncture (NCCAOM)," "Dipl. Ac. (NCCAOM)," or "National Board Certified in Acupuncture (NCCAOM)." The person shall not use other titles, initials, or abbreviations in conjunction with the person's practice of acupuncture, including the title "doctor." 1198  
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**Sec. 4762.09.** An oriental medicine practitioner or acupuncturist ~~who holds~~ holding a certificate to practice issued under this chapter shall conspicuously display at the ~~acupuncturist's~~ individual's primary place of business both of the following: 1208  
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1210  
1211  
1212

(A) The ~~acupuncturist's~~ individual's certificate, as evidence that the ~~acupuncturist~~ individual is authorized to practice ~~acupuncture~~ in this state; 1213  
1214  
1215

(B) A notice specifying that the practice of oriental medicine or acupuncture, as applicable, under the certificate is regulated by the state medical board and the address and telephone number of the board's office. 1216  
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1218  
1219

**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. 1220  
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(B) The practice of an oriental medicine practitioner and an 1223

acupuncturist is subject to a supervisory period if either of the 1224  
following applies: 1225

(1) Except as otherwise provided in division (B)(1) of this 1226  
section, if an acupuncturist practicing on ~~the effective date of~~ 1227  
~~this amendment August 22, 2008,~~ has practiced for less than one 1228  
year and is not subject to any disciplinary action, supervision 1229  
shall be for a period beginning on ~~the effective date of this~~ 1230  
~~amendment August 22, 2008,~~ and ending when the acupuncturist has 1231  
practiced for one year from the date the initial certificate was 1232  
granted. If the acupuncturist is subject to disciplinary action 1233  
during that period, the supervision shall continue until the 1234  
acupuncturist has not been subject to any disciplinary action for 1235  
one year. 1236

(2) Except as otherwise provided in division (B)(2) of this 1237  
section, if ~~an acupuncturist~~ a certificate holder is granted an 1238  
initial certificate to practice on or after the effective date of 1239  
this ~~amendment~~ section, as amended by this act, the supervisory 1240  
period shall begin on the date the certificate is granted and end 1241  
one year thereafter. If the ~~acupuncturist~~ certificate holder is 1242  
subject to disciplinary action during that year, the supervision 1243  
shall continue until the ~~acupuncturist~~ certificate holder has not 1244  
been subject to any disciplinary action for one year. 1245

(C) During ~~an acupuncturist's~~ a certificate holder's 1246  
supervisory period, both of the following apply to the 1247  
~~acupuncturist's~~ certificate holder's practice in addition to the 1248  
requirements of division (E) of this section: 1249

(1) ~~The~~ An oriental medicine practitioner shall perform 1250  
oriental medicine or acupuncture for a patient only if the patient 1251  
has received a written referral or prescription for oriental 1252  
medicine or acupuncture from a physician or for acupuncture from a 1253  
chiropractor. An acupuncturist shall perform acupuncture for a 1254  
patient only if the patient has received a written referral or 1255

prescription for acupuncture from a physician or chiropractor. As 1256  
specified in the referral or prescription, the ~~acupuncturist~~ 1257  
certificate holder shall provide reports to the physician or 1258  
chiropractor on the patient's condition or progress in treatment 1259  
and comply with the conditions or restrictions on the 1260  
~~acupuncturist's~~ certificate holder's course of treatment. 1261

(2) The ~~acupuncturist~~ certificate holder shall perform 1262  
oriental medicine or acupuncture under the general supervision of 1263  
the patient's referring or prescribing physician or chiropractor. 1264  
General supervision does not require that the ~~acupuncturist~~ 1265  
certificate holder and physician or chiropractor practice in the 1266  
same office. 1267

(D) After ~~an acupuncturist's~~ a certificate holder's 1268  
supervisory period has ended, both of the following apply to the 1269  
~~acupuncturist's~~ certificate holder's practice in addition to the 1270  
applicable requirements of division (E) of this section: 1271

(1) Before treating a patient for a particular condition, the 1272  
~~acupuncturist~~ certificate holder shall confirm whether the patient 1273  
has undergone within the past six months a diagnostic examination 1274  
that was related to the condition for which the patient is seeking 1275  
oriental medicine or acupuncture and was performed by a physician 1276  
or chiropractor acting within the ~~physician~~ physician's or 1277  
chiropractor's scope of practice. Confirmation that the diagnostic 1278  
examination was performed may be made by obtaining from the 1279  
patient a signed form stating that the patient has undergone the 1280  
examination. 1281

(2) If the patient does not provide the signed form specified 1282  
in division (D)(1) of this section or the ~~acupuncturist~~ 1283  
certificate holder otherwise determines that the patient has not 1284  
undergone the diagnostic examination specified in that division, 1285  
the ~~acupuncturist~~ certificate holder shall provide to the patient 1286  
a written recommendation to undergo a diagnostic examination by a 1287

physician or chiropractor. 1288

(E) In the practice of oriental medicine and acupuncture 1289  
pursuant to a certificate to practice issued under this chapter, 1290  
all of the following apply: 1291

(1) Prior to treating a patient, the ~~acupuncturist~~ 1292  
certificate holder shall advise the patient that oriental medicine 1293  
or acupuncture, as appropriate, is not a substitute for 1294  
conventional medical diagnosis and treatment. 1295

(2) On initially meeting a patient in person, the 1296  
~~acupuncturist~~ certificate holder shall provide in writing the 1297  
~~acupuncturist's~~ certificate holder's name, business address, and 1298  
business telephone number, and information on oriental medicine or 1299  
acupuncture, as appropriate, including the techniques that are 1300  
used. 1301

(3) While treating a patient, the ~~acupuncturist~~ certificate 1302  
holder shall not make a diagnosis. If a patient's condition is not 1303  
improving or a patient requires emergency medical treatment, the 1304  
~~acupuncturist~~ certificate holder shall consult promptly with a 1305  
physician. 1306

(4) The ~~acupuncturist~~ certificate holder shall maintain 1307  
records for each patient treated. The records shall be 1308  
confidential and shall be retained for not less than three years 1309  
following termination of treatment. 1310

During an ~~acupuncturist's~~ a certificate holder's supervisory 1311  
period, the ~~acupuncturist~~ certificate holder shall include in a 1312  
patient's records the written referral or prescription pursuant to 1313  
which the ~~acupuncturist~~ certificate holder is treating the 1314  
patient. 1315

(5) An individual performing acupuncture pursuant to a 1316  
certificate to practice as an acupuncturist, rather than a 1317  
certificate to practice oriental medicine, shall not perform 1318

acupuncture with the use of herbal therapy. 1319

(6) An individual who holds a certificate to practice 1320  
oriental medicine may administer or dispense, during the use of 1321  
herbal therapy, therapeutic herbs that contain ingredients that 1322  
are similar or equivalent to active ingredients found in a drug 1323  
approved by the federal food and drug administration. 1324

**Sec. 4762.11.** All of the following apply to a supervising 1325  
physician or chiropractor ~~supervising an acupuncturist~~ during the 1326  
~~acupuncturist's~~ supervisory period required by section 4762.10 of 1327  
the Revised Code: 1328

(A) Before making the referral or prescription for oriental 1329  
medicine or acupuncture, the physician shall perform a medical 1330  
diagnostic examination of the patient or review the results of a 1331  
medical diagnostic examination recently performed by another 1332  
physician, or, in the case of a chiropractor, the chiropractor 1333  
shall perform a chiropractic diagnostic examination of the patient 1334  
or review the results of a chiropractic diagnostic examination 1335  
recently performed by another chiropractor. 1336

(B) The physician or chiropractor shall make the referral or 1337  
prescription in writing and specify in the referral or 1338  
prescription all of the following: 1339

(1) The physician's or chiropractor's diagnosis of the 1340  
ailment or condition that is to be treated by oriental medicine or 1341  
acupuncture; 1342

(2) A time by which or the intervals at which the oriental 1343  
medicine practitioner or acupuncturist holding a certificate to 1344  
practice issued under this chapter must provide reports to the 1345  
physician or chiropractor regarding the patient's condition or 1346  
progress in treatment; 1347

(3) The conditions or restrictions placed in accordance with 1348

division (C) of this section on the ~~acupuncturist's~~ certificate  
holder's course of treatment. 1349  
1350

(C) The physician shall place conditions or restrictions on 1351  
the ~~acupuncturist's~~ certificate holder's course of treatment in 1352  
compliance with accepted or prevailing standards of medical care, 1353  
or, in the case of a chiropractor, the chiropractor shall place 1354  
conditions or restrictions on the ~~acupuncturist's~~ certificate  
holder's course of treatment in compliance with accepted or 1355  
prevailing standards of chiropractic care. 1356  
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(D) The physician or chiropractor shall be personally 1358  
available for consultation with the ~~acupuncturist~~ certificate  
holder. If the physician or chiropractor is not on the premises at 1359  
which oriental medicine or acupuncture is performed, the physician 1360  
or chiropractor shall be readily available to the ~~acupuncturist~~ 1361  
certificate holder through some means of telecommunication and be 1362  
in a location that under normal circumstances is not more than 1363  
sixty minutes travel time away from the location where the 1364  
~~acupuncturist~~ certificate holder is practicing. 1365  
1366

**Sec. 4762.12.** In the case of a patient with a claim under 1367  
Chapter 4121. or 4123. of the Revised Code, ~~an acupuncturist's~~ a 1368  
supervising physician or chiropractor is eligible to be reimbursed 1369  
for referring the patient to an oriental medicine practitioner or 1370  
acupuncturist or for prescribing oriental medicine or acupuncture 1371  
for the patient only if the physician has attained knowledge in 1372  
the treatment of patients with oriental medicine or acupuncture, 1373  
or the chiropractor has attained knowledge in the treatment of 1374  
patients with acupuncture, as demonstrated by successful 1375  
completion of a relevant course of study ~~in acupuncture~~ 1376  
administered by a college of medicine, osteopathic medicine, 1377  
podiatric medicine, or chiropractic acceptable to the bureau of 1378  
workers' compensation or administered by another entity acceptable 1379

to the bureau. 1380

**Sec. 4762.13.** (A) The state medical board, by an affirmative 1381  
vote of not fewer than six members, may revoke or may refuse to 1382  
grant a certificate to practice as an oriental medicine 1383  
practitioner or as an acupuncturist to a person found by the board 1384  
to have committed fraud, misrepresentation, or deception in 1385  
applying for or securing the certificate. 1386

(B) The board, by an affirmative vote of not fewer than six 1387  
members, shall, to the extent permitted by law, limit, revoke, or 1388  
suspend an individual's certificate to practice ~~as an~~ 1389  
~~acupuncturist~~, refuse to issue a certificate to an applicant, 1390  
refuse to reinstate a certificate, or reprimand or place on 1391  
probation the holder of a certificate for any of the following 1392  
reasons: 1393

(1) Permitting the holder's name or certificate to be used by 1394  
another person; 1395

(2) Failure to comply with the requirements of this chapter, 1396  
Chapter 4731. of the Revised Code, or any rules adopted by the 1397  
board; 1398

(3) Violating or attempting to violate, directly or 1399  
indirectly, or assisting in or abetting the violation of, or 1400  
conspiring to violate, any provision of this chapter, Chapter 1401  
4731. of the Revised Code, or the rules adopted by the board; 1402

(4)(a) A departure from, or failure to conform to, minimal 1403  
standards of care of similar practitioners under the same or 1404  
similar circumstances whether or not actual injury to the patient 1405  
is established; 1406

(b) Failure to use herbal therapy in accordance with 1407  
traditional or modern oriental medical theory and certification 1408  
standards established by the national certification commission for 1409

<u>acupuncture and oriental medicine;</u>	1410
(5) Inability to practice according to acceptable and	1411
prevailing standards of care by reason of mental illness or	1412
physical illness, including physical deterioration that adversely	1413
affects cognitive, motor, or perceptive skills;	1414
(6) Impairment of ability to practice according to acceptable	1415
and prevailing standards of care because of habitual or excessive	1416
use or abuse of drugs, alcohol, or other substances that impair	1417
ability to practice;	1418
(7) Willfully betraying a professional confidence;	1419
(8) Making a false, fraudulent, deceptive, or misleading	1420
statement in soliciting or advertising for patients or in securing	1421
or attempting to secure a certificate to practice <del>as an</del>	1422
<del>acupuncturist.</del>	1423
As used in this division, "false, fraudulent, deceptive, or	1424
misleading statement" means a statement that includes a	1425
misrepresentation of fact, is likely to mislead or deceive because	1426
of a failure to disclose material facts, is intended or is likely	1427
to create false or unjustified expectations of favorable results,	1428
or includes representations or implications that in reasonable	1429
probability will cause an ordinarily prudent person to	1430
misunderstand or be deceived.	1431
(9) Representing, with the purpose of obtaining compensation	1432
or other advantage personally or for any other person, that an	1433
incurable disease or injury, or other incurable condition, can be	1434
permanently cured;	1435
(10) The obtaining of, or attempting to obtain, money or a	1436
thing of value by fraudulent misrepresentations in the course of	1437
practice;	1438
(11) A plea of guilty to, a judicial finding of guilt of, or	1439

a judicial finding of eligibility for intervention in lieu of conviction for, a felony; 1440  
1441

(12) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed; 1442  
1443  
1444

(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; 1445  
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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; 1448  
1449  
1450

(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; 1451  
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(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; 1454  
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(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; 1457  
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(18) Any of the following actions taken by the state agency responsible for regulating the practice of oriental medicine or 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; 1462  
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(19) Violation of the conditions placed by the board on a certificate to practice <del>as an acupuncturist;</del>	1470 1471
(20) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;	1472 1473 1474
(21) Failure to cooperate in an investigation conducted by the board under section 4762.14 of the Revised Code, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;	1475 1476 1477 1478 1479 1480 1481 1482 1483
(22) <del>Failure</del> <u>Except when action is taken under division (C) of this section, failure</u> 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;	1484 1485 1486 1487 1488
(23) Failure to have adequate professional liability insurance coverage in accordance with section 4762.22 of the Revised Code.	1489 1490 1491
(C) <u>The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, permanently revoke a certificate to practice issued under this chapter if the certificate holder's designation as a diplomate in oriental medicine, diplomate of acupuncture and Chinese herbology, or diplomate in acupuncture, has been revoked by the national certification commission for acupuncture and oriental medicine for a violation of professional ethics.</u>	1492 1493 1494 1495 1496 1497 1498 1499
<u>The board, by an affirmative vote of not fewer than six</u>	1500

members, may revoke a certificate to practice oriental medicine if 1501  
the board determines a professional ethics violation exists but 1502  
the violation is not covered by the national certification 1503  
commission for acupuncture and oriental medicine standards for 1504  
professional ethics. If the board takes this action, the board may 1505  
determine whether the individual who is subject to the revocation 1506  
is eligible to apply for a certificate to practice acupuncture. 1507

(D) Disciplinary actions taken by the board under divisions 1508  
(A) ~~and~~, (B), ~~and~~ (C) of this section shall be taken pursuant to 1509  
an adjudication under Chapter 119. of the Revised Code, except 1510  
that in lieu of an adjudication, the board may enter into a 1511  
consent agreement with ~~an acupuncturist~~ a certificate holder or 1512  
applicant to resolve an allegation of a violation of this chapter 1513  
or any rule adopted under it. A consent agreement, when ratified 1514  
by an affirmative vote of not fewer than six members of the board, 1515  
shall constitute the findings and order of the board with respect 1516  
to the matter addressed in the agreement. If the board refuses to 1517  
ratify a consent agreement, the admissions and findings contained 1518  
in the consent agreement shall be of no force or effect. 1519

~~(D)~~(E) For purposes of divisions (B)(12), (15), and (16) of 1520  
this section, the commission of the act may be established by a 1521  
finding by the board, pursuant to an adjudication under Chapter 1522  
119. of the Revised Code, that the applicant or certificate holder 1523  
committed the act in question. The board shall have no 1524  
jurisdiction under these divisions in cases where the trial court 1525  
renders a final judgment in the certificate holder's favor and 1526  
that judgment is based upon an adjudication on the merits. The 1527  
board shall have jurisdiction under these divisions in cases where 1528  
the trial court issues an order of dismissal upon technical or 1529  
procedural grounds. 1530

~~(E)~~(F) The sealing of conviction records by any court shall 1531  
have no effect upon a prior board order entered under the 1532

provisions of this section or upon the board's jurisdiction to 1533  
take action under the provisions of this section if, based upon a 1534  
plea of guilty, a judicial finding of guilt, or a judicial finding 1535  
of eligibility for intervention in lieu of conviction, the board 1536  
issued a notice of opportunity for a hearing prior to the court's 1537  
order to seal the records. The board shall not be required to 1538  
seal, destroy, redact, or otherwise modify its records to reflect 1539  
the court's sealing of conviction records. 1540

~~(F)~~(G) For purposes of this division, any individual who 1541  
holds a certificate to practice issued under this chapter, or 1542  
applies for a certificate to practice, shall be deemed to have 1543  
given consent to submit to a mental or physical examination when 1544  
directed to do so in writing by the board and to have waived all 1545  
objections to the admissibility of testimony or examination 1546  
reports that constitute a privileged communication. 1547

(1) In enforcing division (B)(5) of this section, the board, 1548  
upon a showing of a possible violation, may compel any individual 1549  
who holds a certificate to practice issued under this chapter or 1550  
who has applied for a certificate pursuant to this chapter to 1551  
submit to a mental examination, physical examination, including an 1552  
HIV test, or both a mental and physical examination. The expense 1553  
of the examination is the responsibility of the individual 1554  
compelled to be examined. Failure to submit to a mental or 1555  
physical examination or consent to an HIV test ordered by the 1556  
board constitutes an admission of the allegations against the 1557  
individual unless the failure is due to circumstances beyond the 1558  
individual's control, and a default and final order may be entered 1559  
without the taking of testimony or presentation of evidence. If 1560  
the board finds ~~an acupuncturist~~ a certificate holder unable to 1561  
practice because of the reasons set forth in division (B)(5) of 1562  
this section, the board shall require the ~~acupuncturist~~ 1563  
certificate holder to submit to care, counseling, or treatment by 1564

physicians approved or designated by the board, as a condition for 1565  
an initial, continued, reinstated, or renewed certificate to 1566  
practice. An individual affected by this division shall be 1567  
afforded an opportunity to demonstrate to the board the ability to 1568  
resume practicing in compliance with acceptable and prevailing 1569  
standards of care. 1570

(2) For purposes of division (B)(6) of this section, if the 1571  
board has reason to believe that any individual who holds a 1572  
certificate to practice issued under this chapter or any applicant 1573  
for a certificate suffers such impairment, the board may compel 1574  
the individual to submit to a mental or physical examination, or 1575  
both. The expense of the examination is the responsibility of the 1576  
individual compelled to be examined. Any mental or physical 1577  
examination required under this division shall be undertaken by a 1578  
treatment provider or physician qualified to conduct such 1579  
examination and chosen by the board. 1580

Failure to submit to a mental or physical examination ordered 1581  
by the board constitutes an admission of the allegations against 1582  
the individual unless the failure is due to circumstances beyond 1583  
the individual's control, and a default and final order may be 1584  
entered without the taking of testimony or presentation of 1585  
evidence. If the board determines that the individual's ability to 1586  
practice is impaired, the board shall suspend the individual's 1587  
certificate or deny the individual's application and shall require 1588  
the individual, as a condition for an initial, continued, 1589  
reinstated, or renewed certificate, to submit to treatment. 1590

Before being eligible to apply for reinstatement of a 1591  
certificate suspended under this division, the ~~acupuncturist~~ 1592  
certificate holder shall demonstrate to the board the ability to 1593  
resume practice in compliance with acceptable and prevailing 1594  
standards of care. The demonstration shall include the following: 1595

(a) Certification from a treatment provider approved under 1596

section 4731.25 of the Revised Code that the individual has 1597  
successfully completed any required inpatient treatment; 1598

(b) Evidence of continuing full compliance with an aftercare 1599  
contract or consent agreement; 1600

(c) Two written reports indicating that the individual's 1601  
ability to practice has been assessed and that the individual has 1602  
been found capable of practicing according to acceptable and 1603  
prevailing standards of care. The reports shall be made by 1604  
individuals or providers approved by the board for making such 1605  
assessments and shall describe the basis for their determination. 1606

The board may reinstate a certificate suspended under this 1607  
division after such demonstration and after the individual has 1608  
entered into a written consent agreement. 1609

When the impaired ~~acupuncturist~~ certificate holder resumes 1610  
practice, the board shall require continued monitoring of the 1611  
~~acupuncturist~~ certificate holder. The monitoring shall include 1612  
monitoring of compliance with the written consent agreement 1613  
entered into before reinstatement or with conditions imposed by 1614  
board order after a hearing, and, upon termination of the consent 1615  
agreement, submission to the board for at least two years of 1616  
annual written progress reports made under penalty of 1617  
falsification stating whether the ~~acupuncturist~~ certificate holder 1618  
has maintained sobriety. 1619

~~(G)~~(H) If the secretary and supervising member determine that 1620  
there is clear and convincing evidence that ~~an acupuncturist a~~ 1621  
certificate holder has violated ~~division~~ divisions (B) or (C) of 1622  
this section and that the individual's continued practice presents 1623  
a danger of immediate and serious harm to the public, they may 1624  
recommend that the board suspend the individual's certificate to 1625  
practice without a prior hearing. Written allegations shall be 1626  
prepared for consideration by the board. 1627

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

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

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

~~(H)~~(I) If the board takes action under division (B)(11), (13), or (14) of this section, and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition and supporting court documents, the board shall reinstate the certificate to practice.

The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of opportunity for hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act, or if no hearing is requested, it may order any of the sanctions specified in division (B) of this section.

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

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

~~(J)~~(K) In any instance in which the board is required by Chapter 119. of the Revised Code to give notice of opportunity for

hearing and the individual subject to the notice does not timely 1692  
request a hearing in accordance with section 119.07 of the Revised 1693  
Code, the board is not required to hold a hearing, but may adopt, 1694  
by an affirmative vote of not fewer than six of its members, a 1695  
final order that contains the board's findings. In the final 1696  
order, the board may order any of the sanctions identified under 1697  
division (A) ~~or~~, (B), or (C) of this section. 1698

~~(K)~~(L) Any action taken by the board under division (B) of 1699  
this section resulting in a suspension shall be accompanied by a 1700  
written statement of the conditions under which the 1701  
~~acupuncturist's~~ certificate to practice may be reinstated. The 1702  
board shall adopt rules in accordance with Chapter 119. of the 1703  
Revised Code governing conditions to be imposed for reinstatement. 1704  
Reinstatement of a certificate suspended pursuant to division (B) 1705  
of this section requires an affirmative vote of not fewer than six 1706  
members of the board. 1707

~~(L)~~(M) When the board refuses to grant a certificate to 1708  
practice ~~as an acupuncturist~~ to an applicant, revokes an 1709  
individual's certificate, refuses to renew a certificate, or 1710  
refuses to reinstate an individual's certificate, the board may 1711  
specify that its action is permanent. An individual subject to a 1712  
permanent action taken by the board is forever thereafter 1713  
ineligible to hold a certificate to practice ~~as an acupuncturist~~ 1714  
issued under this chapter and the board shall not accept an 1715  
application for reinstatement of the certificate or for issuance 1716  
of a new certificate. 1717

~~(M)~~(N) Notwithstanding any other provision of the Revised 1718  
Code, all of the following apply: 1719

(1) The surrender of a certificate to practice ~~as an~~ 1720  
~~acupuncturist~~ issued under this chapter is not effective unless or 1721  
until accepted by the board. Reinstatement of a certificate 1722  
surrendered to the board requires an affirmative vote of not fewer 1723

than six members of the board. 1724

(2) An application made under this chapter for a certificate 1725  
may not be withdrawn without approval of the board. 1726

(3) Failure by an individual to renew a certificate in 1727  
accordance with section 4762.06 of the Revised Code shall not 1728  
remove or limit the board's jurisdiction to take disciplinary 1729  
action under this section against the individual. 1730

**Sec. 4762.131.** On receipt of a notice pursuant to section 1731  
~~2301.373~~ 3123.43 of the Revised Code, the state medical board 1732  
shall comply with ~~that section~~ sections 3123.41 to 3123.50 of the 1733  
Revised Code and any applicable rules adopted under section 1734  
3123.63 of the Revised Code with respect to a certificate to 1735  
practice ~~as an acupuncturist~~ issued pursuant to this chapter. 1736

**Sec. 4762.132.** If the state medical board has reason to 1737  
believe that any person who has been granted under this chapter a 1738  
certificate to practice ~~as an acupuncturist~~ is mentally ill or 1739  
mentally incompetent, it may file in the probate court of the 1740  
county in which the person has a legal residence an affidavit in 1741  
the form prescribed in section 5122.11 of the Revised Code and 1742  
signed by the board secretary or a member of the board secretary's 1743  
staff, whereupon the same proceedings shall be had as provided in 1744  
Chapter 5122. of the Revised Code. The attorney general may 1745  
represent the board in any proceeding commenced under this 1746  
section. 1747

If any person who has been granted a certificate is adjudged 1748  
by a probate court to be mentally ill or mentally incompetent, the 1749  
person's certificate shall be automatically suspended until the 1750  
person has filed with the state medical board a certified copy of 1751  
an adjudication by a probate court of the person's subsequent 1752  
restoration to competency or has submitted to the board proof, 1753

satisfactory to the board, that the person has been discharged as 1754  
having a restoration to competency in the manner and form provided 1755  
in section 5122.38 of the Revised Code. The judge of the probate 1756  
court shall forthwith notify the state medical board of an 1757  
adjudication of mental illness or mental incompetence, and shall 1758  
note any suspension of a certificate in the margin of the court's 1759  
record of such certificate. 1760

**Sec. 4762.14.** (A) The state medical board shall investigate 1761  
evidence that appears to show that any person has violated this 1762  
chapter or the rules adopted under it. Any person may report to 1763  
the board in a signed writing any information the person has that 1764  
appears to show a violation of any provision of this chapter or 1765  
the rules adopted under it. In the absence of bad faith, a person 1766  
who reports such information or testifies before the board in an 1767  
adjudication conducted under Chapter 119. of the Revised Code 1768  
shall not be liable for civil damages as a result of reporting the 1769  
information or providing testimony. Each complaint or allegation 1770  
of a violation received by the board shall be assigned a case 1771  
number and be recorded by the board. 1772

(B) Investigations of alleged violations of this chapter or 1773  
rules adopted under it shall be supervised by the supervising 1774  
member elected by the board in accordance with section 4731.02 of 1775  
the Revised Code and by the secretary as provided in section 1776  
4762.15 of the Revised Code. The board's president may designate 1777  
another member of the board to supervise the investigation in 1778  
place of the supervising member. A member of the board who 1779  
supervises the investigation of a case shall not participate in 1780  
further adjudication of the case. 1781

(C) In investigating a possible violation of this chapter or 1782  
the rules adopted under it, the board may administer oaths, order 1783  
the taking of depositions, issue subpoenas, and compel the 1784

attendance of witnesses and production of books, accounts, papers, 1785  
records, documents, and testimony, except that a subpoena for 1786  
patient record information shall not be issued without 1787  
consultation with the attorney general's office and approval of 1788  
the secretary and supervising member of the board. Before issuance 1789  
of a subpoena for patient record information, the secretary and 1790  
supervising member shall determine whether there is probable cause 1791  
to believe that the complaint filed alleges a violation of this 1792  
chapter or the rules adopted under it and that the records sought 1793  
are relevant to the alleged violation and material to the 1794  
investigation. The subpoena may apply only to records that cover a 1795  
reasonable period of time surrounding the alleged violation. 1796

On failure to comply with any subpoena issued by the board 1797  
and after reasonable notice to the person being subpoenaed, the 1798  
board may move for an order compelling the production of persons 1799  
or records pursuant to the Rules of Civil Procedure. 1800

A subpoena issued by the board may be served by a sheriff, 1801  
the sheriff's deputy, or a board employee designated by the board. 1802  
Service of a subpoena issued by the board may be made by 1803  
delivering a copy of the subpoena to the person named therein, 1804  
reading it to the person, or leaving it at the person's usual 1805  
place of residence. When the person being served is an oriental 1806  
medicine practitioner or acupuncturist, service of the subpoena 1807  
may be made by certified mail, restricted delivery, return receipt 1808  
requested, and the subpoena shall be deemed served on the date 1809  
delivery is made or the date the person refuses to accept 1810  
delivery. 1811

A sheriff's deputy who serves a subpoena shall receive the 1812  
same fees as a sheriff. Each witness who appears before the board 1813  
in obedience to a subpoena shall receive the fees and mileage 1814  
provided for under section 119.094 of the Revised Code. 1815

(D) All hearings and investigations of the board shall be 1816

considered civil actions for the purposes of section 2305.252 of 1817  
the Revised Code. 1818

(E) Information received by the board pursuant to an 1819  
investigation is confidential and not subject to discovery in any 1820  
civil action. 1821

The board shall conduct all investigations and proceedings in 1822  
a manner that protects the confidentiality of patients and persons 1823  
who file complaints with the board. The board shall not make 1824  
public the names or any other identifying information about 1825  
patients or complainants unless proper consent is given. 1826

The board may share any information it receives pursuant to 1827  
an investigation, including patient records and patient record 1828  
information, with law enforcement agencies, other licensing 1829  
boards, and other governmental agencies that are prosecuting, 1830  
adjudicating, or investigating alleged violations of statutes or 1831  
administrative rules. An agency or board that receives the 1832  
information shall comply with the same requirements regarding 1833  
confidentiality as those with which the state medical board must 1834  
comply, notwithstanding any conflicting provision of the Revised 1835  
Code or procedure of the agency or board that applies when it is 1836  
dealing with other information in its possession. In a judicial 1837  
proceeding, the information may be admitted into evidence only in 1838  
accordance with the Rules of Evidence, but the court shall require 1839  
that appropriate measures are taken to ensure that confidentiality 1840  
is maintained with respect to any part of the information that 1841  
contains names or other identifying information about patients or 1842  
complainants whose confidentiality was protected by the state 1843  
medical board when the information was in the board's possession. 1844  
Measures to ensure confidentiality that may be taken by the court 1845  
include sealing its records or deleting specific information from 1846  
its records. 1847

(F) The state medical board shall develop requirements for 1848

and provide appropriate initial training and continuing education 1849  
for investigators employed by the board to carry out its duties 1850  
under this chapter. The training and continuing education may 1851  
include enrollment in courses operated or approved by the Ohio 1852  
peace officer training council that the board considers 1853  
appropriate under conditions set forth in section 109.79 of the 1854  
Revised Code. 1855

(G) On a quarterly basis, the board shall prepare a report 1856  
that documents the disposition of all cases during the preceding 1857  
three months. The report shall contain the following information 1858  
for each case with which the board has completed its activities: 1859

(1) The case number assigned to the complaint or alleged 1860  
violation; 1861

(2) The type of certificate to practice, if any, held by the 1862  
individual against whom the complaint is directed; 1863

(3) A description of the allegations contained in the 1864  
complaint; 1865

(4) The disposition of the case. 1866

The report shall state how many cases are still pending, and 1867  
shall be prepared in a manner that protects the identity of each 1868  
person involved in each case. The report is a public record for 1869  
purposes of section 149.43 of the Revised Code. 1870

**Sec. 4762.15.** (A) As used in this section, "prosecutor" has 1871  
the same meaning as in section 2935.01 of the Revised Code. 1872

(B) Whenever any person holding a valid certificate to 1873  
practice ~~as an acupuncturist~~ issued pursuant to this chapter 1874  
pleads guilty to, is subject to a judicial finding of guilt of, or 1875  
is subject to a judicial finding of eligibility for intervention 1876  
in lieu of conviction for a violation of Chapter 2907., 2925., or 1877  
3719. of the Revised Code or of any substantively comparable 1878

ordinance of a municipal corporation in connection with the 1879  
person's practice, the prosecutor in the case, on forms prescribed 1880  
and provided by the state medical board, shall promptly notify the 1881  
board of the conviction. Within thirty days of receipt of that 1882  
information, the board shall initiate action in accordance with 1883  
Chapter 119. of the Revised Code to determine whether to suspend 1884  
or revoke the certificate under section 4762.13 of the Revised 1885  
Code. 1886

(C) The prosecutor in any case against any person holding a 1887  
valid certificate to practice issued pursuant to this chapter, on 1888  
forms prescribed and provided by the state medical board, shall 1889  
notify the board of any of the following: 1890

(1) A plea of guilty to, a finding of guilt by a jury or 1891  
court of, or judicial finding of eligibility for intervention in 1892  
lieu of conviction for a felony, or a case in which the trial 1893  
court issues an order of dismissal upon technical or procedural 1894  
grounds of a felony charge; 1895

(2) A plea of guilty to, a finding of guilt by a jury or 1896  
court of, or judicial finding of eligibility for intervention in 1897  
lieu of conviction for a misdemeanor committed in the course of 1898  
practice, or a case in which the trial court issues an order of 1899  
dismissal upon technical or procedural grounds of a charge of a 1900  
misdemeanor, if the alleged act was committed in the course of 1901  
practice; 1902

(3) A plea of guilty to, a finding of guilt by a jury or 1903  
court of, or judicial finding of eligibility for intervention in 1904  
lieu of conviction for a misdemeanor involving moral turpitude, or 1905  
a case in which the trial court issues an order of dismissal upon 1906  
technical or procedural grounds of a charge of a misdemeanor 1907  
involving moral turpitude. 1908

The report shall include the name and address of the 1909

certificate holder, the nature of the offense for which the action 1910  
was taken, and the certified court documents recording the action. 1911

**Sec. 4762.16.** (A) Within sixty days after the imposition of 1912  
any formal disciplinary action taken by any health care facility, 1913  
including a hospital, health care facility operated by a health 1914  
insuring corporation, ambulatory surgical center, or similar 1915  
facility, against any individual holding a valid certificate to 1916  
practice ~~as an acupuncturist~~ issued pursuant to this chapter, the 1917  
chief administrator or executive officer of the facility shall 1918  
report to the state medical board the name of the individual, the 1919  
action taken by the facility, and a summary of the underlying 1920  
facts leading to the action taken. Upon request, the board shall 1921  
be provided certified copies of the patient records that were the 1922  
basis for the facility's action. Prior to release to the board, 1923  
the summary shall be approved by the peer review committee that 1924  
reviewed the case or by the governing board of the facility. 1925

The filing of a report with the board or decision not to file 1926  
a report, investigation by the board, or any disciplinary action 1927  
taken by the board, does not preclude a health care facility from 1928  
taking disciplinary action against ~~an acupuncturist~~ a certificate 1929  
holder. 1930

In the absence of fraud or bad faith, no individual or entity 1931  
that provides patient records to the board shall be liable in 1932  
damages to any person as a result of providing the records. 1933

(B) An oriental medicine practitioner or acupuncturist, 1934  
professional association or society of oriental medicine 1935  
practitioners or acupuncturists, physician, or professional 1936  
association or society of physicians that believes a violation of 1937  
any provision of this chapter, Chapter 4731. of the Revised Code, 1938  
or rule of the board has occurred shall report to the board the 1939  
information upon which the belief is based. This division does not 1940

require any treatment provider approved by the board under section 1941  
4731.25 of the Revised Code or any employee, agent, or 1942  
representative of such a provider to make reports with respect to 1943  
~~an acupuncturist~~ a certificate holder participating in treatment 1944  
or aftercare for substance abuse as long as the ~~acupuncturist~~ 1945  
certificate holder maintains participation in accordance with the 1946  
requirements of section 4731.25 of the Revised Code and the 1947  
treatment provider or employee, agent, or representative of the 1948  
provider has no reason to believe that the ~~acupuncturist~~ 1949  
certificate holder has violated any provision of this chapter or 1950  
rule adopted under it, other than being impaired by alcohol, 1951  
drugs, or other substances. This division does not require 1952  
reporting by any member of an impaired practitioner committee 1953  
established by a health care facility or by any representative or 1954  
agent of a committee or program sponsored by a professional 1955  
association or society of oriental medicine practitioners or 1956  
acupuncturists to provide peer assistance to oriental medicine 1957  
practitioners or acupuncturists with substance abuse problems with 1958  
respect to ~~an acupuncturist~~ a certificate holder who has been 1959  
referred for examination to a treatment program approved by the 1960  
board under section 4731.25 of the Revised Code if the 1961  
~~acupuncturist~~ certificate holder cooperates with the referral for 1962  
examination and with any determination that the ~~acupuncturist~~ 1963  
certificate holder should enter treatment and as long as the 1964  
committee member, representative, or agent has no reason to 1965  
believe that the ~~acupuncturist~~ certificate holder has ceased to 1966  
participate in the treatment program in accordance with section 1967  
4731.25 of the Revised Code or has violated any provision of this 1968  
chapter or rule adopted under it, other than being impaired by 1969  
alcohol, drugs, or other substances. 1970

(C) Any professional association or society composed 1971  
primarily of oriental medicine practitioners or acupuncturists 1972  
that suspends or revokes an individual's membership for violations 1973

of professional ethics, or for reasons of professional 1974  
incompetence or professional malpractice, within sixty days after 1975  
a final decision, shall report to the board, on forms prescribed 1976  
and provided by the board, the name of the individual, the action 1977  
taken by the professional organization, and a summary of the 1978  
underlying facts leading to the action taken. 1979

The filing of a report with the board or decision not to file 1980  
a report, investigation by the board, or any disciplinary action 1981  
taken by the board, does not preclude a professional organization 1982  
from taking disciplinary action against an ~~acupuncturist~~ 1983  
individual. 1984

(D) Any insurer providing professional liability insurance to 1985  
any person holding a valid certificate to practice ~~as an~~ 1986  
~~acupuncturist~~ issued pursuant to this chapter or any other entity 1987  
that seeks to indemnify the professional liability of ~~an~~ 1988  
~~acupuncturist~~ a certificate holder shall notify the board within 1989  
thirty days after the final disposition of any written claim for 1990  
damages where such disposition results in a payment exceeding 1991  
twenty-five thousand dollars. The notice shall contain the 1992  
following information: 1993

(1) The name and address of the person submitting the 1994  
notification; 1995

(2) The name and address of the insured who is the subject of 1996  
the claim; 1997

(3) The name of the person filing the written claim; 1998

(4) The date of final disposition; 1999

(5) If applicable, the identity of the court in which the 2000  
final disposition of the claim took place. 2001

(E) The board may investigate possible violations of this 2002  
chapter or the rules adopted under it that are brought to its 2003

attention as a result of the reporting requirements of this 2004  
section, except that the board shall conduct an investigation if a 2005  
possible violation involves repeated malpractice. As used in this 2006  
division, "repeated malpractice" means three or more claims for 2007  
malpractice within the previous five-year period, each resulting 2008  
in a judgment or settlement in excess of twenty-five thousand 2009  
dollars in favor of the claimant, and each involving negligent 2010  
conduct by ~~the acupuncturist~~ a certificate holder. 2011

(F) All summaries, reports, and records received and 2012  
maintained by the board pursuant to this section shall be held in 2013  
confidence and shall not be subject to discovery or introduction 2014  
in evidence in any federal or state civil action involving ~~an~~ 2015  
~~acupuncturist~~ a certificate holder, supervising physician, or 2016  
health care facility arising out of matters that are the subject 2017  
of the reporting required by this section. The board may use the 2018  
information obtained only as the basis for an investigation, as 2019  
evidence in a disciplinary hearing against ~~an acupuncturist~~ a 2020  
certificate holder or supervising physician, or in any subsequent 2021  
trial or appeal of a board action or order. 2022

The board may disclose the summaries and reports it receives 2023  
under this section only to health care facility committees within 2024  
or outside this state that are involved in credentialing or 2025  
recredentialing an oriental medicine practitioner or acupuncturist 2026  
or supervising physician or reviewing their privilege to practice 2027  
within a particular facility. The board shall indicate whether or 2028  
not the information has been verified. Information transmitted by 2029  
the board shall be subject to the same confidentiality provisions 2030  
as when maintained by the board. 2031

(G) Except for reports filed by an individual pursuant to 2032  
division (B) of this section, the board shall send a copy of any 2033  
reports or summaries it receives pursuant to this section to the 2034  
~~acupuncturist~~ certificate holder. The ~~acupuncturist~~ certificate 2035

holder shall have the right to file a statement with the board 2036  
concerning the correctness or relevance of the information. The 2037  
statement shall at all times accompany that part of the record in 2038  
contention. 2039

(H) An individual or entity that reports to the board or 2040  
refers an impaired ~~acupuncturist~~ certificate holder to a treatment 2041  
provider approved by the board under section 4731.25 of the 2042  
Revised Code shall not be subject to suit for civil damages as a 2043  
result of the report, referral, or provision of the information. 2044

(I) In the absence of fraud or bad faith, a professional 2045  
association or society of oriental medicine practitioners or 2046  
acupuncturists that sponsors a committee or program to provide 2047  
peer assistance to an oriental medicine practitioner or 2048  
acupuncturist with substance abuse problems, a representative or 2049  
agent of such a committee or program, and a member of the state 2050  
medical board shall not be held liable in damages to any person by 2051  
reason of actions taken to refer ~~an acupuncturist~~ a certificate 2052  
holder to a treatment provider approved under section 4731.25 of 2053  
the Revised Code for examination or treatment. 2054

**Sec. 4762.17.** The secretary of the state medical board shall 2055  
enforce the laws relating to the practice of oriental medicine and 2056  
acupuncture. If the secretary has knowledge or notice of a 2057  
violation of this chapter or the rules adopted under it, the 2058  
secretary shall investigate the matter, and, upon probable cause 2059  
appearing, file a complaint and prosecute the offender. When 2060  
requested by the secretary, the prosecuting attorney of the proper 2061  
county shall take charge of and conduct the prosecution. 2062

**Sec. 4762.18.** (A) Subject to division (E) of this section, 2063  
the attorney general, the prosecuting attorney of any county in 2064  
which the offense was committed or the offender resides, the state 2065

medical board, or any other person having knowledge of a person 2066  
engaged either directly or by complicity in the practice of 2067  
oriental medicine or acupuncture without having first obtained a 2068  
certificate to do so pursuant to this chapter, may, in accord with 2069  
provisions of the Revised Code governing injunctions, maintain an 2070  
action in the name of the state to enjoin any person from engaging 2071  
either directly or by complicity in the unlawful practice of 2072  
oriental medicine or acupuncture by applying for an injunction in 2073  
any court of competent jurisdiction. 2074

(B) Prior to application for an injunction under division (A) 2075  
of this section, the secretary of the state medical board shall 2076  
notify the person allegedly engaged either directly or by 2077  
complicity in the unlawful practice of oriental medicine or 2078  
acupuncture by registered mail that the secretary has received 2079  
information indicating that this person is so engaged. The person 2080  
shall answer the secretary within thirty days showing that the 2081  
person is either properly licensed for the stated activity or that 2082  
the person is not in violation of this chapter. If the answer is 2083  
not forthcoming within thirty days after notice by the secretary, 2084  
the secretary shall request that the attorney general, the 2085  
prosecuting attorney of the county in which the offense was 2086  
committed or the offender resides, or the state medical board 2087  
proceed as authorized in this section. 2088

(C) Upon the filing of a verified petition in court, the 2089  
court shall conduct a hearing on the petition and shall give the 2090  
same preference to this proceeding as is given all proceedings 2091  
under Chapter 119. of the Revised Code, irrespective of the 2092  
position of the proceeding on the calendar of the court. 2093

(D) Injunction proceedings as authorized by this section 2094  
shall be in addition to, and not in lieu of, all penalties and 2095  
other remedies provided in this chapter. 2096

(E) An injunction proceeding permitted by division (A) of 2097

this section may not be maintained against a person described in 2098  
division (B) of section 4762.02 of the Revised Code or a 2099  
chiropractor who holds a valid certificate to practice acupuncture 2100  
issued under section 4734.283 of the Revised Code. 2101

**Sec. 4762.19.** The state medical board may adopt any rules 2102  
necessary to govern the practice of oriental medicine and 2103  
acupuncture, the supervisory relationship between ~~acupuncturists~~ 2104  
certificate holders and supervising physicians, and the 2105  
administration and enforcement of this chapter. Rules adopted 2106  
under this section shall be adopted in accordance with Chapter 2107  
119. of the Revised Code. 2108

**Sec. 4762.22.** ~~An acupuncturist who holds~~ The holder of a 2109  
certificate to practice issued under this chapter shall have 2110  
professional liability insurance coverage in an amount that is not 2111  
less than five hundred thousand dollars. 2112

**Section 2.** That existing sections 4731.22, 4731.36, 4734.31, 2113  
4762.01, 4762.02, 4762.03, 4762.031, 4762.04, 4762.05, 4762.06, 2114  
4762.08, 4762.09, 4762.10, 4762.11, 4762.12, 4762.13, 4762.131, 2115  
4762.132, 4762.14, 4762.15, 4762.16, 4762.17, 4762.18, 4762.19, 2116  
and 4762.22 of the Revised Code are hereby repealed. 2117

**Section 3.** Section 4731.22 of the Revised Code is presented 2118  
in this act as a composite of the section as amended by Am. Sub. 2119  
H.B. 280, Sub. H.B. 525, and Sub. S.B. 229 of the 127th General 2120  
Assembly. The General Assembly, applying the principle stated in 2121  
division (B) of section 1.52 of the Revised Code that amendments 2122  
are to be harmonized if reasonably capable of simultaneous 2123  
operation, finds that the composite is the resulting version of 2124  
the section in effect prior to the effective date of the section 2125  
as presented in this act. 2126