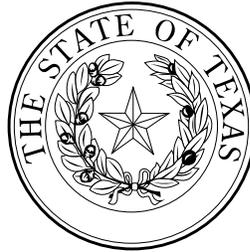


**Texas State Board of  
Acupuncture Examiners**

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**Staff Report**



**Texas Sunset  
Advisory Commission**

**1996**

## TEXAS SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS STATE BOARD OF  
ACUPUNCTURE EXAMINERS**

**STAFF REPORT**

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# **REPORT SUMMARY**



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# Report Summary

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The Texas State Board of Acupuncture Examiners was created in 1993 to ensure the public's health and safety by regulating the practice of acupuncture in Texas. The Acupuncture Board was established as an advisory board to the Texas State Board of Medical Examiners (BME). Administrative support is provided by BME staff. Since created, the Acupuncture Board has reviewed almost 400 applications for licensure and licensed approximately 300 acupuncturists. The Board has also adopted rules to establish procedures and standards for the training, education, licensing, and discipline of acupuncturists in Texas.

Although state agencies are typically provided a 12-year period of operation before a Sunset review is required, the Acupuncture Board was provided only three years to operate before it came under Sunset review. Because of the shorter time frame, the Sunset review of the Board served to provide an intermediate and more limited check on the continuing need for the Board and its general progress in developing the state's licensing and regulation of acupuncturists. Sunset staff found that the functions of the Acupuncture Board are needed and that considerable progress has been made in the licensing of the state's acupuncturists. The Board and staff have also worked extensively in developing rules and a program of enforcement.

The review found that the current status of the Acupuncture Board, as an adjunct of the Medical Board, has worked well and should continue. The purpose and focus of this Sunset review then was to improve the operation of the Acupuncture Board to help ensure the public's safety and welfare as well as the needs of the licensed community. To that end, the recommendations seek to standardize the Acupuncture Board's regulatory tools to match those of other health licensing agencies — in particular, those tools granted to the Medical Board which oversees physicians and physician assistants, as well as acupuncturists.

## Review Activities

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In conducting the review, the Sunset staff:

- Worked with BME staff — executive management and staff assigned to the Acupuncture Board;

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*The review found that the current status of the Acupuncture Board, as an adjunct of the Medical Board, has worked well and should continue.*

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- Worked with the Lieutenant Governor's Office, the Speaker's Office, and other legislative committees and staff;
- Attended public meetings of the Acupuncture Board;
- Solicited input from and met with interest groups about their concerns with the Acupuncture Board and recommendations for improvement; and
- Reviewed agency documents and reports, state statutes, legislative reports, previous legislation, literature on acupuncture and alternative medicine, other states information, and information available on the Internet.

## Results

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### 1. Continue the Texas State Board of Acupuncture Examiners for eight years.

The practice of acupuncture and the public's reliance on it as a form of treatment is growing nationwide. A recent study found that one-third of Americans have relied on some form of alternative medicine, including acupuncture, to treat a variety of conditions. Approximately 300 individuals are licensed to practice acupuncture in the state of Texas. The state needs to continue its effort in regulating the practice and ensuring the health and welfare of the public in this area.

***Recommendation:*** Continue the Acupuncture Board for eight years so it can be reviewed with the other health licensing agencies in 2005.

### 2. Broaden the Board's standard licensing authority to improve the regulation of acupuncturists.

Health care licensing agencies screen applicants for licensure, administer examinations, issue initial licenses and renewals, monitor the continued competence of licensees, and take disciplinary action against licensees who violate the licensing law or related rules. The state intends these functions to protect the general public's health in the delivery of health care services. The Sunset review of the Acupuncture Board focused on a comparison of the licensing structure for acupuncturists with those structures used to regulate the various health professions in Texas. In cases where the Board's authority did not meet the standard, recommendations were developed to bring the regulation of acupuncture in line with the state's standard regulatory approach.

***Recommendation:*** Standardize the regulation of acupuncture by granting the Board authority to issue subpoenas, require licensees to maintain a current address on file, and issue temporary licenses. Also, make the grounds for denial of an acupuncture license and for disciplinary action

against an acupuncture licensee consistent with similar grounds that apply to physicians and physician assistants licensed under the Medical Practice Act.

### **Fiscal Impact Summary** \_\_\_\_\_

The recommendation to continue the Acupuncture Board would require its annual appropriations of approximately \$64,033 to continue.



# ISSUES

# Issue 1



## Continue the Texas State Board of Acupuncture Examiners for Eight Years.

### Background

Acupuncture is an ancient form of medical treatment that originated in China over 5,000 years ago. The practice of acupuncture is now receiving increased attention as an alternative to traditional Western medicine from American health care consumers. Acupuncture involves the use of very fine needles inserted into the skin at certain points on the body and may also involve the use of heat or a mild electric current.

Acupuncture is used to treat a variety of conditions from allergies and asthma to stress reduction, pain management, and substance abuse. Acupuncturists commonly treat other ailments such as back pain, tendinitis, arthritis, depression and tobacco addiction. Acupuncture is also being combined with more traditional medical treatments so that patients may receive acupuncture as a part of a standard medical treatment protocol authorized by a licensed physician.

In 1993, after years of controversy, a federal lawsuit, an Attorney General's Opinion, and several failed legislative attempts, the Texas State Board of Acupuncture Examiners was created by the 73rd Legislature to regulate the practice of acupuncture in Texas. Since its creation, the Board has reviewed almost 400 applications for licensure and licensed approximately 300 acupuncturists. Agency staff projects that the Board will license about 50 acupuncturists annually.

In a Sunset review, to justify the continuation of an agency and its functions, certain conditions should exist as required by the Sunset Act. First, a current and continuing need should exist for the state to provide the functions or services. Secondly, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to any other state agency.

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*The Acupuncture Board has reviewed almost 400 applications for licensure and licensed about 300 acupuncturists.*

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## Findings

- ▼ **Ensuring public health and safety by licensing and regulating the health care professions has been identified as an essential role of government.**
  - ▶ The state has an obligation to ensure that all health and medical practitioners have met established standards and are subject to enforcement sanctions should the quality of care they deliver diminish. The state's obligation to maintain strong regulations is more critical than ever because of the increasingly complex nature of the health care decisions faced by the public.
  - ▶ Texas currently licenses more than 20 health care professions through state licensing Boards. These practitioners include physicians, chiropractors, dentists, nurses, professional counselors, veterinarians, physician assistants and acupuncturists. Each licensing Board provides protection of the public by verifying licensee education and training, assessing licensee qualifications, establishing practice standards, investigating complaints, taking disciplinary action, and requiring continuing education.
  
- ▼ **Because of the significant increase in the public's use of acupuncture, the practice has received widespread attention from the federal government and other states.**
  - ▶ In 1993, the New England Journal of Medicine published an article that found that 34 percent of adults surveyed reported using one or more forms of alternative medicine, with the cost for services provided by alternative medicine practitioners estimated to be more than \$13 billion a year.<sup>1</sup> An estimated 12 million people have used acupuncture nationwide.<sup>2</sup>
  - ▶ In 1992, the Office of Alternative Medicine was created within the National Institutes of Health to "facilitate the evaluation of alternative medical treatment modalities; investigate and validate the efficacy of alternative treatments; establish an information clearinghouse to exchange information with the public about alternative medicine; support research training; and prepare biennial reports."<sup>3</sup> Acupuncture is considered a form of alternative medicine within the jurisdiction of this office.

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*An estimated 12 million people have used acupuncture nationwide.*

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- ▶ In March 1996, the Food and Drug Administration ruled that acupuncture needles are considered a medical device, just like syringes or scalpels.<sup>4</sup>
- ▶ Twenty-nine states and the District of Columbia currently regulate the practice of acupuncture. The state of Oregon has a measure on its ballot requiring health insurance companies to reimburse all state-licensed health care practitioners, including acupuncturists.<sup>5</sup> In Seattle, Washington, the King County Council, governing board for the greater Seattle area, voted to establish the nation's first government-subsidized natural medicine clinic which includes acupuncture treatment services.<sup>6</sup>
- ▼ **State licensing and regulation of acupuncturists helps protect the public from potential injury.**
  - ▶ Potential health injuries that could result from unqualified acupuncture practitioners include the puncturing of vital organs, excessive bleeding, and the spread of infectious diseases through improperly sterilized needles.
  - ▶ The Board of Acupuncture ensures that all licensed practitioners meet educational requirements and performance standards. The Acupuncture Board requires applicants for licensure to meet nationally recognized standards set by national organizations such as the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine and the National Commission for the Certification of Acupuncturists. In addition, agency staff also conduct personal interviews with each applicant and review and investigate each application and the required documentation.
- ▼ **The current advisory status of the Acupuncture Board provides for solid administrative support and beneficial oversight by the Board of Medical Examiners.**
  - ▶ The expertise of the agency staff in general state agency operations, licensure, and enforcement, as well as in rulemaking, has proven invaluable to the Acupuncture Board. The Board of Medical Examiners has been in existence for almost 90 years and currently has over 46,000 active licensees.

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*Twenty-nine states  
regulate the  
practice of  
acupuncture.*

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*The Acupuncture Board's current relationship with the Board of Medical Examiners has proven beneficial and should be continued.*

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- ▶ Every rule adopted and license granted by the Acupuncture Board must be approved by the Medical Board, thus incorporating the expertise and experience of both acupuncturists and physicians.

### **Conclusion**

With the increased national and state attention given to the practice of acupuncture and the increased reliance on it as a mode of treatment by the public, continuing regulation of the practice in Texas serves the state's interest in protecting the health and welfare of its citizens. The Acupuncture Board has been in existence for almost three years and has licensed almost 300 acupuncturists, developing rules to regulate the profession as well as an expertise and knowledge about the profession. The Board's current relationship with the Board of Medical Examiners has proven beneficial and should be continued.

## **Recommendation**

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### **Change in Statute**

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- **Continue the Texas State Board of Acupuncture Examiners for eight years.**

This recommendation would continue the state regulation of acupuncture in Texas, thereby protecting the health and welfare of the public by allowing them to verify fully qualified practitioners. This recommendation would result in the agency having a new Sunset date of September 1, 2005, the same as all the other health care licensing agencies currently under Sunset Review. The Board's current administrative and advisory relationship with the Board of Medical Examiners would be continued.

### **Fiscal Impact**

If the Legislature continues the current functions of the Acupuncture Board, the fiscal year 1996 appropriation, approximately \$64,033 would continue to be required for its operation.

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<sup>1</sup> Eisenberg D., et al., "Unconventional Medicine in the United States: Prevalence, Costs and Patterns of Use," *New Engl J Med* 1993, 328(4):248-252.

<sup>2</sup> Doug Podolsky, "Nod to an Ancient Art; the FDA has OK'd Acupuncture Needles, and they could help you," *U.S. News and World Report*, vol. 120, no. 19 (May 13, 1996), p. 78.

<sup>3</sup> Office of Alternative Medicine, National Institutes of Health, *General Information Package*, June 1995.

<sup>4</sup> Doug Podolsky, "Nod to an Ancient Art; the FDA has OK'd Acupuncture Needles, and they could help you," *U.S. News and World Report*, vol. 120, no. 19 (May 13, 1996), p. 78.

<sup>5</sup> "Election Unites Acupuncturists, Tobacco Lobby", *Wall Street Journal*, October 29, 1996, p.B1.

<sup>6</sup> "Seattle Officials Seeking to Establish A Subsidized Natural Medicine Clinic", *New York Times*, January 2, 1996, p. 8.



# Issue 2



## Broaden the Board's Standard Licensing Authority to Improve the Regulation of Acupuncturists.

### Background

Occupational regulation is an exercise of the state's inherent power to protect the health, safety, and welfare of its citizens. Agencies achieve occupational regulation primarily through licensure, which requires a person to meet state-imposed standards to practice an occupation or a profession. The state provides for a significant amount of regulation and oversight of the numerous health care professions. Health care licensing agencies screen applicants for licensure, administer examinations, issue initial licenses and renewals, monitor the continued competence of licensees, and take disciplinary action against licensees who violate the licensing law or related rules. The state intends these functions to protect the general public's health in the delivery of health care services.

One of the most recent expansions of health care profession regulation, in Texas, is the licensing of acupuncturists. In 1993, the state started licensing through the Board of Acupuncture Examiners — an advisory board attached to the State Board of Medical Examiners (BME). With the support of BME staff and advice from the Medical Board, the Acupuncture Board has been providing standard regulation of acupuncturists to protect the increasing number of people receiving acupuncture treatment.

During the same time period that the Acupuncture Board was created, the Sunset Commission reviewed some 20 health care licensing boards. Sunset staff used a standard licensing framework during the review of health licensing agencies to evaluate the strength and effectiveness of the state's regulation of the health care professions. The review resulted in significant standardization of the regulatory structures administered by the agencies under review. The review of the Acupuncture Board used that experience to focus on five areas of operation typically associated with occupational regulation. These areas are fee authority, examination, licensing, enforcement, and continuing education. The following table details each of the key areas:

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*Sunset's  
experience with  
licensing provided  
a basis to review  
the Board's  
regulatory  
authority.*

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Standard	Description
Fee Authority	Generally, the state has used licensing fees to cover the costs of regulation and, in some cases, to raise revenue for the state. Current practice in Texas state government provides that fees paid by licensed professionals should cover the costs of regulating the profession. The licensing agency collects the fees and deposits them in the State Treasury. Funding for the agency is then appropriated from the General Revenue Fund.
Examination	Licensing examinations are designed to measure the competence of persons seeking a license. The examinations specifically measure the knowledge, skills, and abilities needed to safely and effectively perform in a selected licensed profession. Besides measuring the potential licensee's capabilities, the examination must be difficult enough to screen out those persons who lack the necessary level of competence. Agencies should independently validate occupational licensing examinations to ensure the accuracy, integrity, and validity of the tests.
Licensing	The regulation of an occupational profession should offer options to the licensees to accommodate their licensing needs during a lifetime of practice. Licensing options are typically authorized in statute and include licensing by reciprocity or endorsement, temporary and provisional licensing, and inactive license status.
Enforcement	To carry out enforcement responsibility, licensing Boards are given the authority to take action and impose sanctions against licensees who do not perform properly regarding laws, rules, ethical standards, and generally accepted practice. Enforcement authority should be adequate to allow a licensing Board to achieve compliance whether by reforming licensees or removing them from practice. State law generally provides licensing Boards with a standard enforcement structure that consists of a range of powers. Basic powers include the authority to reprimand or warn, suspend, or revoke the practitioner's license.
Continuing Education	The licensing process ensures that at the time of original licensure, an applicant has achieved the minimum level of competence to practice a profession in the state. Once an individual achieves initial licensure, the agency renews the license regularly as long as the licensee pays various fees and does not commit offenses that result in the revocation of the license. Most licensing boards require continuing professional education courses to be taken on a yearly or biennial basis as a means to ensure continued professional competency. Generally, continuing education programs are intended to fill the gap between the initial licensure of an applicant or serve as an enforcement action against incompetent or negligent licensees.

The Sunset review of the Acupuncture Board focused on a comparison of the licensing structure for acupuncturists with those structures used to regulate the various health professions in Texas. In cases where the Board's authority did not meet the standard, recommendations were developed to bring the regulation of acupuncture in line with the state's standard regulatory approach.

## Findings

- ▼ **The Board does not have clearly defined subpoena power.**
  - ▶ A subpoena is an order issued to compel the appearance of a witness at a judicial or, in this case, administrative, proceeding. A subpoena duces tecum is a type of subpoena which orders a person to bring specific documents to the proceeding.
  - ▶ Subpoenas are commonly used tools in regulatory agencies for the purposes of investigating alleged violations or misconduct by licensees and for contested case hearings.
  - ▶ Most other health care licensing agencies have this power, including the Boards which license physicians, physician assistants, psychologists, athletic trainers, physical therapists, vocational nurses, pharmacists and podiatrists. The Acupuncture Board has had to rely on the subpoena authority of the Medical Board in its administrative support role.
  
- ▼ **The statute does not require that licensees maintain current addresses.**
  - ▶ A licensee's current address is important for the licensing entity to have on file in case of any complaint investigation or service of process, as well as general administrative necessity.
  - ▶ A current address on file is also important for license renewal purposes. Most licensing Boards have a provision in statute that requires them to notify the licensee 30 days before the expiration of the license. Sending this notice to a current address would expedite the renewal process as well as reduce the potential for practicing with an expired license.
  
- ▼ **The Acupuncture Board's authority to deny license applications and discipline current licensees is limited compared to the authority vested in the Board of Medical Examiners and the Board of Physician Assistant Examiners.**
  - ▶ The other two health care professions under the Medical Practice Act with the Acupuncture Board — the Board of Medical Examiners and the Board of Physician Assistant Examiners — have broader authority to deny an applicant or discipline a licensee based on unprofessional or dishonorable conduct likely to deceive or defraud the public, acts in

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*The Acupuncture Board lacks sufficient authority to deny license applications and discipline current licensees.*

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## Recommendation

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### Change in Statute

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- Standardize the regulation of acupuncture by granting the Board authority to:
  - issue subpoenas,
  - require licensees to maintain a current address on file, and
  - issue temporary licenses.
- Make the grounds for denial of an acupuncture license and for disciplinary action against an acupuncture licensee consistent with similar grounds that apply to physicians and physicians assistants licensed under the Medical Practice Act.

These recommendations would give the Acupuncture Board additional regulatory tools, available to other licensing Boards, necessary to effectively regulate the practice of acupuncture.

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### Fiscal Impact

This recommendation will not result in a fiscal impact to the state.



**ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas State Board of Acupuncture Examiners</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Update	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Apply	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Provide for notification and information to the public concerning agency activities.
Update	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Not Applicable	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Update	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Modify	14. Require information to be maintained on complaints.
Not Applicable	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Not Applicable	16. Require development of an equal employment opportunity policy.
Not Applicable	17. Require the agency to establish career ladders.
Not Applicable	18. Require a system of merit pay based on documented employee performance.

<b>Texas State Board of Acupuncture Examiners</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Apply	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Already in Statute	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
See Issue 2	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
See Issue 2	6. Authorize agencies to use a full range of penalties.
Update	7. Specify disciplinary hearing requirements.
Apply	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

# **BACKGROUND**

# Background

## Agency History

The regulation of acupuncture in Texas has been a matter of continuing debate. In 1974, the Texas State Board of Medical Examiners (BME) determined that the practice of acupuncture was considered to be the practice of medicine and adopted a policy statement and rules to regulate the practice. The policy statement declared that acupuncture was an “experimental procedure” that should be restricted to licensed physicians and adopted rules reflecting this position. These rules were challenged in a federal lawsuit<sup>1</sup> and were found by the Court to be unconstitutional because they deprived individuals of their constitutional rights by limiting their access to acupuncture treatments.

New rules regarding acupuncture were promulgated in 1981 by BME that allowed licensed physicians to sponsor and supervise acupuncturists. Again the rules were found to be unconstitutional, this time by the Attorney General<sup>2</sup>, because of the lack of a rational relationship between the rules and the goal of protecting the public. The rule requirements that were problematic included the separation of offices between the acupuncturist and the supervising physician, the restriction of one supervising physician per acupuncturist, the requirement that acupuncturists wear lapel pins, and the restriction of separate itemized billing for acupuncturist services. The unconstitutional requirements were finally removed from BME rules in 1989, but acupuncturists were still required to practice under the supervision of a physician and were not allowed to perform any procedure that required independent medical judgment.

In 1991, a bill was introduced in the 72nd Legislature to regulate the practice of acupuncture by creating an independent acupuncturist licensing committee within BME, however, it was not passed into law.<sup>3</sup> In 1993, however, the 73rd Legislature authorized the creation of the Texas State Board of Acupuncture Examiners, within the Board of Medical Examiners, to provide an orderly system of regulating the practice of acupuncture, subject to the advice and approval of the Medical Board.

### What is Acupuncture?

The word “acupuncture” is derived from the Latin root words “acu,” meaning “needles” and “punctura,” meaning a “pricking.”

Defined in the Medical Practice Act, acupuncture is:

- the insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body;
- a primary mode of therapy to treat and mitigate a human condition;
- administration of thermal or electric treatments; and
- recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the insertion of acupuncture needles or the application of moxibustion.

## Policymaking Structure

Acupuncture Board Members	
<b>Acupuncturists</b>	
Shen Ping Liang, Ph.D., <i>Assistant Presiding Officer</i> - Houston	
Lawrence Woon-Chung Chan - Amarillo	
Cheng Ming Chang - San Antonio	
Lisa Ping-Hui Lin - Austin	
<b>Physicians</b>	
Stephen M. Taylor, D.O. - Fort Worth	
Annette M. Zaharoff, M.D. - San Antonio	
<b>Public Members</b>	
The Honorable Gus L. Garcia <i>Presiding Officer</i> - Austin	
Nancy M. Land - Crockett	
Mary Rebecca Atchley - Lubbock	

The Texas State Board of Acupuncture Examiners is governed by a nine-member Board appointed by the governor. Members serve six-year staggered terms not requiring Senate confirmation. The Board is composed of four acupuncturists with at least five years of acupuncture experience in Texas but who are not physicians, two physicians licensed in Texas with experience in acupuncture, and three public members not licensed or trained in a health care profession. The Board Chair is appointed by the Governor. The statute does not require the Board to meet a specific number of times. However, the Board met a total of 12 times in 1994 and 1995, and has met a total of four times for 1996. The Executive Director for BME also serves as Executive Director for the Acupuncture Board.

The statutory duties of the Board, which are subject to the advice and approval of BME, include:

- establishing qualifications for practice in Texas,
- establishing minimum educational and training requirements,
- administering an examination validated by independent testing professionals,
- developing requirements for licensure by endorsement,
- prescribing the application form for a license to practice,
- making recommendations on applications to practice,
- establishing a procedure for reporting and processing complaints,
- establishing requirements for a tutorial program, and
- recommending additional rules as necessary for administration and enforcement.

## Funding and Organization

Funding for the Acupuncture Board comes from General Revenue. Revenue is generated through licensure and registration fees. The statute requires that the Medical Board set fees that are reasonable and necessary to cover the costs of administering and enforcing the provisions of the Subchapter F of the Medical Practice Act, which relates to acupuncture.<sup>4</sup> The chart, *Annual Fee Revenue*, shows the breakdown of amounts collected in fees for fiscal years 1994 - 1996.

Annual Fee Revenue	
FY 1994	\$97,475
FY 1995	\$59,637
FY 1996	\$ 68,875

Background

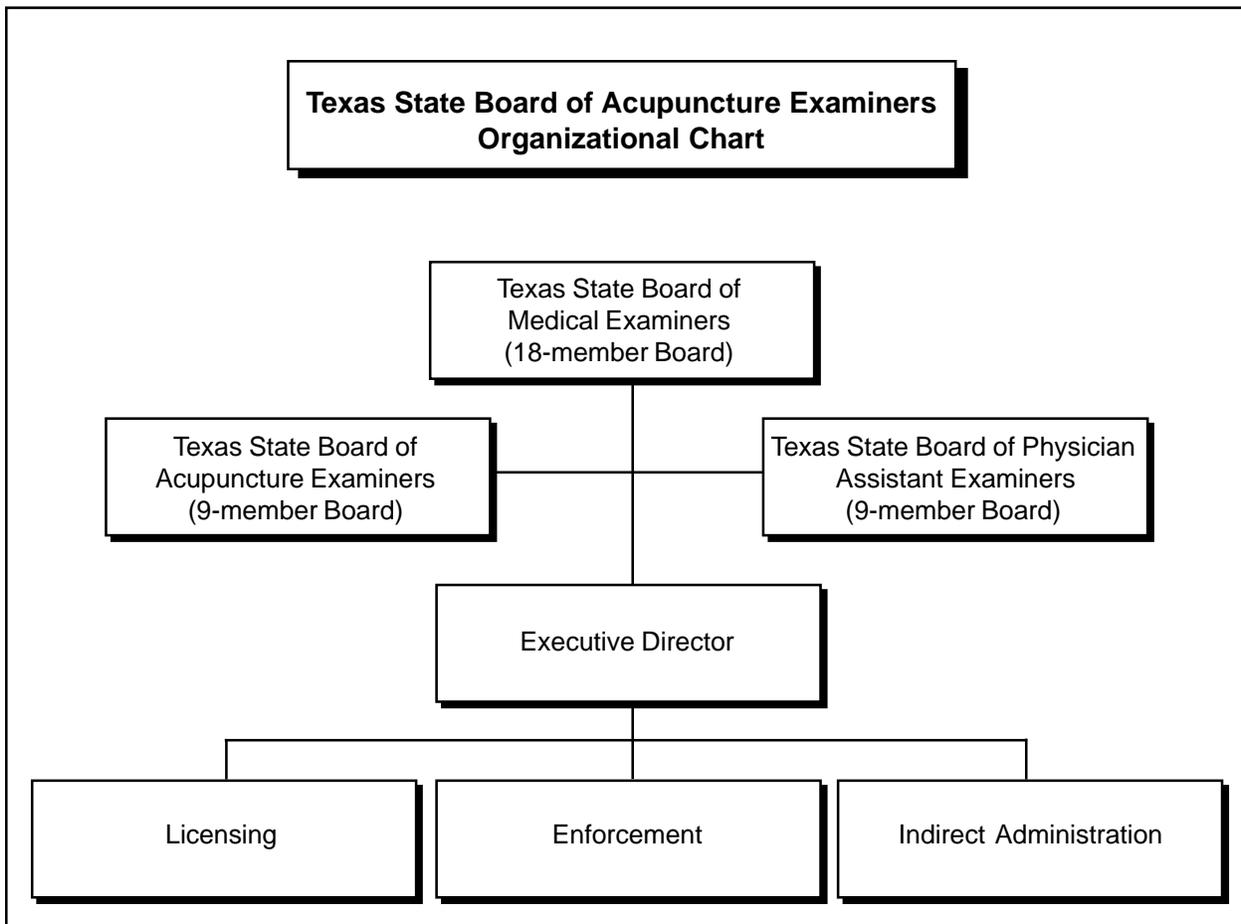
The budget for the Acupuncture Board originally came through a rider in the 1993 Appropriations Bill, which covered all changes made to the Medical Practice Act made by the 73rd Legislature. The budget for the Acupuncture Board was later set as a separate strategy of the Board of Medical Examiners budget. The chart, *Annual Appropriations and Expenditures*, shows the appropriated and expended amounts for fiscal years 1994-1996.

Annual Appropriations and Expenditures		
FY 1994	\$69,113	\$62,027
FY 1995	\$63,862	\$80,907
FY 1996	\$ 59,614	\$59,536

The Acupuncture Board does not have staff of its own, but uses Medical Board staff for support. The chart, *BME Staff Attributed to Acupuncture Board*, shows the percentage of time that BME staff spend on Acupuncture Board matters.

BME Staff Attributed to Acupuncture Board	
Executive Director	0.10
Legal	0.45
Licensing	0.70
Enforcement	0.55
Indirect Administration	0.38
Total	2.18 FTEs

The organizational chart shows how the Acupuncture Board fits within the Board of Medical Examiners.



## Agency Operations

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In the Board of Medical Examiners strategic plan, one agency strategy is devoted to the Acupuncture Board. This strategy identifies the Acupuncture Board's main purpose, to administer the rules established for licensing, investigating, and enforcing the practice of acupuncture.

### Licensing

To become licensed as an acupuncturist in Texas, an applicant must fulfill the following requirements:

- at least 21 years of age,
- of good professional character,
- successful completion of 60 semester hours of general academic college level courses, other than in acupuncture school,
- graduation from a National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine-approved school,
- passage of the National Commission for the Certification of Acupuncturists examination,
- passage of the Council of Colleges of Acupuncture and Oriental Medicine clean needle technique,
- if the applicant is licensed in other state, the license must be clear of restrictions, and
- ability to communicate in English.

Other professionals licensed by the Medical Practice Act (physicians and surgeons) are exempt from these licensure requirements and can practice acupuncture without an acupuncture license. A recent Attorney General Opinion held that chiropractors could not practice acupuncture with only a chiropractor's license.

Twenty-nine other states regulate acupuncturists at some level. In Texas, the Acupuncture Board relies on several national associations for the accreditation of acupuncture schools and the administration of an acupuncture exam. The National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (National Accreditation Commission) has accredited 33 programs nationwide and three schools in Texas (two of these schools are in the candidacy phase of accreditation). Standards for accreditation include requirements concerning administration, faculty, and program of study. The National Commission for the Certification of Acupuncturists (NCCA) administers an exam for certification of acupuncturists. Twenty-six states, including

Texas, use this exam as a requirement for acupuncture licensure or certification. The Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) administers an exam on clean needle technique.

The chart, *Number of Licensees*, shows the total number of licensed acupuncturists in Texas in fiscal years 1994 - 1996.

Number of Licensees	
FY 1994	134
FY 1995	264
FY 1996	304

Since its inception, the Acupuncture Board has received a total of 392 applications for licensure. The Acupuncture Board reviews the applications and makes a recommendation to approve or deny licensure to the Medical Board, who ultimately issues the licenses. Thirty-one applications have been denied so far, with the main reasons for denial being lack of required documentation, falsification on application, and insufficient education. In fiscal year 1996, 284 license applications were received. The application fee for licensure is \$300 and the renewal fee is \$250. Licenses must be renewed annually in November.

## Enforcement

The Acupuncture Board is responsible for ensuring that every acupuncture licensee practices within the accepted standards of care and that the licensee's conduct complies with the statutory requirements and related rules. BME provides enforcement staff for investigation of complaints against acupuncturists and monitoring acupuncturists with licensure or disciplinary restrictions, as well as providing legal staff to assist the Acupuncture Board in disciplinary and licensure hearings and in conducting Board meetings.

The Board has granted five restricted licenses to applicants and has two licensing cases pending final resolution before State Office of Administrative Hearings (SOAH). Three applicants have been denied licensure as a result of administrative hearings before SOAH. The Board has initiated five investigations against acupuncture licensees in fiscal year 1996.

<sup>1</sup> *Andrews v. Ballard*, 498 F.Supp. 1038 (1980).

<sup>2</sup> Tex. Atty. Gen. Op. JM-125 (1984).

<sup>3</sup> Tex. S.B. 1556, 72nd Leg., R.S. (1991).

<sup>4</sup> Tex. Rev. Civ. Stat. Ann. art. 4495b, § 6.09(Vernon 1996).



**TEXAS STATE BOARD OF  
ACUPUNCTURE EXAMINERS**

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