

The Texas Medical Board (Board) proposes the repeal of current Chapter 184, concerning Surgical Assistants §§184.1 – 184.9 and §§184.12 – 184.26.

The Board also proposes new Chapter 184, concerning Acupuncture. This includes new Subchapter A, concerning Acupuncture Board, §§184.1 – 184.4, Subchapter B, concerning Licensing and Registration, §§184.10 – 184.19, Subchapter C, concerning Practice Requirements, §§184.25 – 184.27, Subchapter D, concerning Board Processes and Procedures, §184.30; and Subchapter E, concerning Acudetox Specialists, §§184.35 – 184.37.

Also, the Board contemporaneously proposes the repeal of current Chapter 183, concerning Acupuncture, §§183.1 – 183.27.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 184 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

SUBCHAPTER A. ACUPUNCTURE BOARD.

New §184.1, Definitions, defines terms used in new Chapter 184.

New §184.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §184.3, Meetings, explains how Board and Committee meetings are conducted.

New §184.4, Standing Committees, explains the function of the three Standing Committees of the Board.

SUBCHAPTER B. LICENSING AND REGISTRATION.

New §184.10, General Requirements for Licensure, outlines the general standards for licensure for a Texas acupuncture license.

New §184.11, Current Clinical Practice, outlines the professional or work history information applicants must provide for review when seeking a license.

New §184.12, Temporary Licenses, explains the standards required when a temporary license may be issued and the purpose of the license.

New §184.13, Examinations and Attempt Limits, outlines the applicants' requirements to take and pass the examination for licensure eligibility.

New §184.14, Procedural Rules for Licensure Applicants, explains the procedural rules for Applicants in accordance with §205.202 of the Act.

New §184.15, Relicensure, explains the requirements for a license holder who retired or surrendered their license and is seeking to be re-licensed.

New §184.16, License Registration and Renewal, explains the registration and renewal process of an acupuncture license.

New §184.17, Biennial Continuing Acupuncture Education (CAE) Requirements, explains the requirements of a license holder, as part of registration renewal with regard to biennial continuing Acupuncture education.

New §184.18, Approval of Continuing Education Courses and Providers, explains the purpose, requirements, and process for approval of continuing education courses and providers.

New §184.19, Inactive License, explains the number of years that the license is automatically canceled after being placed on inactive status for 3 years. The process for relicensure is required for activation of a canceled license.

SUBCHAPTER C. PRACTICE REQUIREMENTS.

New §184.25, Patient Records, outlines the general requirements for keeping and maintaining adequate patient records, including retention periods.

New §184.26, On-Going Reporting Requirements, states that a license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §184.27, Acupuncture Advertising, describes what type of acupuncture advertising is or is not considered to be permissible or prohibited.

SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

New §184.30, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §205.351 of the Act.

SUBCHAPTER E, ACUDETOX SPECIALISTS.

New §184.35, Definitions, defines the term, Auricular Acudetox.

New §184.36, Acudetox Certification, outlines the general requirements and process for certification to perform acudetox, including acupuncture certificate renewal.

New §184.37, Other Requirements Related to Acudetox Practice, states that Certificate-holders must keep a current mailing and practice address on file with the board and that a change of address must be reported to the board within 10 days. Also, this section states that Certificate-holders use of titles is restricted to Certified Acudetox Specialist" or "C.A.S." and that failure to comply with Acudetox rules may result in loss of certification.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link:
<https://forms.office.com/g/Ts2WsLfkZB>. A public hearing will be held at a later date.
Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of Acupuncture; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

- §184.1. Purpose.
- §184.2. Definitions.
- §184.3. Meetings.
- §184.4. Qualifications for Licensure.
- §184.5. Procedural Rules for Licensure Applicants.
- §184.6. Licensure Documentation.
- §184.7. Temporary Licensure.
- §184.8. License Renewal.
- §184.9. Relicensure.
- §184.12. Surgical Assistant Scope of Practice.
- §184.13. Physician Supervision.
- §184.14. Supervising Physician.
- §184.15. Grounds for Denial of Licensure and for Disciplinary Action.
- §184.16. Discipline of Surgical Assistants.
- §184.17. Disciplinary Guidelines.
- §184.18. Administrative Penalties.
- §184.19. Complaint Procedure Notification.
- §184.20. Investigations.
- §184.21. Impaired Surgical Assistants.
- §184.22. Procedure.
- §184.23. Compliance.
- §184.24. Construction.
- §184.25. Continuing education.
- §183.26. Voluntary Relinquishment or Surrender of a License.

*n

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed

in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

SUBCHAPTER A. ACUPUNCTURE BOARD.

§184.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Acupuncture Act or "the Act"-- Texas Occupations Code, Chapter 205.
- (2) Acupuncture Board or "board" -- The Texas State Board of Acupuncture Examiners.
- (3) Acceptable approved acupuncture school -- Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Act:
 - (A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) or another accrediting body recognized by the Texas Higher Education Coordinating Board, provides certification that the curriculum at the time of the applicant's graduation was equivalent to the curriculum upon which accreditation granted, offered a master's degree or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:
 - (i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;
 - (ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;
 - (iii) patent herbs including the names of the more common patent herbal medications and their uses; and
 - (iv) clinical training emphasizing herbal uses; or
 - (B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAHM or another accrediting body recognized by the Texas Higher Education Coordinating Board, offered a master's degree or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

- (i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;
- (ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;
- (iii) patent herbs including the names of the more common patent herbal medications and their uses; and
- (iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph. An evaluation by the Foreign Credentials Service of America (FCSA) or an evaluation requested by the board may be utilized when making a determination of substantial equivalence.

(4) Medical Practice Act -- Texas Occupations Code Annotated, Title 3, Subtitle B, as amended.

§184.2. Functions and Duties.

(a) In accordance with §205.101 of the Act, board duties and functions include:

- (1) establishing standards for the practice of acupuncture;
- (2) regulating acupuncturists through licensure and discipline;
- (3) receiving complaints and investigating possible violations of the Act and the board rules;
- (4) reviewing, modifying, proposing, and adopting rules;
- (5) considering, reviewing, and approving policy as necessary; and
- (6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual board members are required to:

- (1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;
- (2) comply with the Act;
- (3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member shall refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority; and

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

§184.3. Meetings.

(a) Board and Committee meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer of the board or by resolution of the board.

(c) The board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

§184.4. Standing Committees.

The Standing Committees of the board are as follows:

(1) Discipline and Ethics Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for licensure of acupuncturists;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas acupuncture programs.

(3) Education Committee:

(A) reviews and makes recommendations concerning educational requirements for licensure in Texas;

(B) reviews and makes recommendations for continuing education requirements and providers used for renewal of a Texas license; and

(C) reviews information regarding foreign acupuncture schools and adequacy of education for licensure.

*n

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

SUBCHAPTER B. LICENSING AND REGISTRATION.

§184.10. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §205.203 of the Act and submit:

(1) the board required application form;

(2) payment of the required fee of \$320.00, and additional fees and surcharges as applicable; and

(3) required documentation including, but not limited to:

(A) a Dean's Certification of Graduation form verifying completion of an acceptable approved acupuncture school;

(B) an Acupuncture School Transcript, including proof of completion of 1,800 instructional hours, with at least 450 hours of herbal studies;

(C) certified transcript of NCCAOM Examination Scores;

(D) evidence of passage of the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;

(E) proof of ability to communicate in English as described in §184.13 of this chapter (relating to Examinations and Attempt limits);

(F) a birth certificate or other similar proof of age;

(G) Professional or Work History Evaluation forms demonstrating or relating to the practice of acupuncture for the preceding five years from the date of the application;

(H) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(I) FBI/DPS Fingerprint Report;

(J) documentation of alternate name or name change, if applicable;

(K) arrest records, if applicable;

(L) malpractice records, if applicable;

(M) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(N) military orders or DD214, if applicable;

(O) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(P) any other documentation deemed necessary by the board to process an application, including certified translation of any document in a language other than the English language along with the original document or a certified copy of the translated document.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

§184.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as an acupuncturist in the preceding five years from the date of application.

"Current clinical practice" may be demonstrated by:

(1) currently practicing acupuncture involving treatment of persons;

(2) enrollment as a student at an acceptable approved acupuncture school; or

(3) appointment as an active teaching faculty member at an acceptable approved acupuncture school.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as an acupuncturist within the last three years from date of application:

(1) a Supervised Temporary License as set forth in §184.12 of this title;

(2) remedial education including, but not limited to, enrollment as a student and successful completion of 240 hours of clinical practice at an acceptable approved acupuncture school or other structured program approved by the board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

§184.12. Temporary Licenses.

(a) Applicants for a temporary license must meet the requirements in §205.208 of the Act.

(b) Temporary licenses may be issued to:

(1) an applicant who is qualified for a full license, subject to terms and conditions that require board approval; or

(2) remedy current clinical practice issues set forth in §184.11 of this chapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary license to remedy a current clinical practice issue under §184.11 of this chapter, an applicant must be supervised by a licensed acupuncturist who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the board.

(d) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee of \$107.00.

(e) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

§184.13. Examinations and Attempt Limits.

(a) An applicant must provide proof of passage of the following:

(1) The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination, consisting of the following:

(A) if taken before June 1, 2004: the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTTP), the Practical Examination of Point Location Skills (PEPLS), and the Chinese Herbology Exam; or

(B) if taken on or after June 1, 2004: the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Location Module, the Chinese Herbology Module, and the Biomedicine Module; and

(2) CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination.

(b) All applicants must take and pass, within six attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination.

(c) English proficiency is demonstrated by:

(1) graduation from an of approved school of acupuncture located in the United States or Canada; or

(2) passage of any of the following recognized tests:

(A) English language version of NCCAOM examination; or

(B) Passing score of 70% or better on each section of any of the following tests:

(i) Test of English as a Foreign Language (TOEFL);

(ii) Test of English for International Communication (TOEIC);

(iii) Occupational English Test (OET); or

(iv) other examination of English competency considered acceptable to the board.

§184.14. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §205.202 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§184.15. Relicensure.

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$320.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §184.10 of this chapter (relating to General Requirement for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) In accordance with §205.3522 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§184.16. License Registration and Renewal.

(a) Within 90 days of a license being issued, it must be registered by:

(1) completing a board registration form;

(2) submitting payment of the initial registration fee of \$671.00, and additional fees and surcharges, as applicable;

(3) providing requested information related to their online verification; and

(4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

(1) completing a board renewal form;

- (2) submitting payment of a biennial registration fee of \$667.00, and additional fees and surcharges, as applicable;
 - (3) verifying and updating information related to their online verification;
 - (4) completing biennial continuing acupuncture education (CAE) required under §184.17 of this chapter (relating to Biennial Continuing Acupuncture Education (CAE) Requirements); and
 - (5) providing other relevant information requested by board staff.
- (c) Failure to renew before a license's expiration date will result in increased charges as follows:
- (1) 1-90 days late -- renewal fee plus one half of the renewal fee; and
 - (2) 91 days-1 year late -- double the renewal fee.
- (d) Failure to renew within one year after the license's expiration date will result in cancellation of the license.

§184.17. Biennial Continuing Acupuncture Education (CAE) Requirements.

- (a) As part of registration renewal, a license holder must complete 34 hours of CAE during the biennial renewal period as follows:
- (1) Minimum core hours include:
 - (A) eight hours in general acupuncture therapies;
 - (B) two hours in ethics and safety;
 - (C) six hours in herbology; and
 - (D) four hours of biomedicine.
 - (2) Completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission. This course may satisfy the required two core hours in ethics and safety.
 - (3) The remaining CAE hours may be from other approved courses. No more than four hours in business practice or office administration is allowed.
- (b) Approved courses are:
- (1) courses approved by the board;
 - (2) courses offered by board approved CAE providers;

- (3) NCCAOM professional development activity credits; and
- (4) CAE providers who are formally approved by another state for a minimum of three years.
- (c) Carry forward of CAE credit is allowed as follows:
 - (1) no more than 34 excess hours earned in a biennium may be applied to the following biennial requirements; and
 - (2) no hours can be carried forward past a single renewal period.
 - (d) Instructors of board-approved CAE courses may receive three hours of CAE credit for each hour of lecture with a maximum of six hours of continuing education credit per year. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.
- (e) Exemptions for CAE requirements.
 - (1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:
 - (A) catastrophic illness
 - (B) military service of longer than one year's duration outside the state;
 - (C) licensee's residence of longer than one year's duration outside the United States; or
 - (D) other good cause.
 - (2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§184.18. Approval of Continuing Education Courses and Providers.

- (a) Pursuant to §205.255 of the Act, the following must be approved by the board:
 - (1) CAE courses and providers that are not NCCAOM approved; and
 - (2) acceptable approved acupuncture schools and colleges seeking to be approved providers.
- (b) Requests for approval of CAE courses must include:
 - (1) a form approved by the board;
 - (2) payment of required fee of \$25.00; and

(3) other requested documentation including, but not limited to:

(A) Course description related to acupuncture or oriental medicine, including techniques, skills, and patient care;

(B) method of instruction or teaching;

(C) the name, credentials, competency and training of the instructor(s);

(D) verification of attendance/participation;

(E) each credit hour is equal to no less than 50 minutes of actual instruction or training;

(F) name and location of school, state, or professional organization; and

(G) provide written evaluations available to the board upon request.

(c) Requests for approval of a CAE provider must include:

(1) a form approved by the board;

(2) payment of required fee of \$50.00;

(3) other requested documentation including, but not limited to, evidence that the provider has three continuous years of previous experience providing at least one different CAE course in Texas in each of those years that were approved by the board; and

(4) only one provider number is issued to an organization, and it is not transferable.

(d) Provider Responsibilities and Duties. The provider must:

(1) keep course records for four years demonstrating the following:

(A) course outlines of each course given;

(B) record of time and places of each course given;

(C) course instructor and their qualifications;

(D) the attendance record showing the name, signature and license number of licensed attendees; and

(E) copy of a certificate of completion.

(2) provide notice of any changes in person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(e) After board review, notice of the decision will be provided to the requestor.

(f) Approval, if granted, is valid for three years.

(g) Approval may be withdrawn based on information received concerning a course or provider. If the board is considering withdrawing approval, notice will be provided prior to taking any action.

§184.19. Inactive License.

(a) A license may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the license will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §184.10 of this chapter (relating to General Requirements for Licensure).

(d) After a license has been cancelled, an applicant must meet all requirements under §184.15 of this chapter (relating to Relicensure) to obtain relicensure.

*n

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

SUBCHAPTER C. PRACTICE REQUIREMENTS.

§184.25. Patient Records.

(a) Acupuncturists must keep and maintain adequate patient records in English that include, but are not limited to:

(1) the patient's name and address;

(2) vital signs;

- (3) the chief complaint;
- (4) a patient history;
- (5) documented patient consent, including written patient consent for treatment in sensitive areas;
- (6) a treatment plan, including amounts and forms of herbal medications and other modalities, including acupuncture terms, including herbs, may use the Chinese or Pinyin translation if commonly known by such translation;
- (7) adequate billing records to support charges and billing codes used; and
- (8) copies of referrals to and from other providers done in accordance with §205.301 of the Act, including the below form for documentation required by §205.301(b) of the Act:

Figure 1:22 TAC §184.25(a)(8)

(b) Retention of Patient and Billing Records. An acupuncturist must retain patient records as follows:

- (1) for a minimum of five years from the date of last treatment by the acupuncturist.
- (2) For patients younger than 18 years of age, until the patient reaches age 21, or for five years from the date of last treatment, whichever is longer.

(c) For purposes of releasing or providing copies of patient records:

- (1) §159.005 of the Medical Practice Act applies, along with other applicable state and federal laws including HIPAA; and
- (2) allowable charges are those listed in §163.3(c) of this title (relating to Request for Medical Records).

§184.26. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) -(7) of this title (relating to Profile Updates) to the board within 10 days after the event.

§184.27. Acupuncture Advertising.

- (a) Acupuncturists shall not authorize or use false, misleading, or deceptive advertising.
- (b) Acupuncturists also shall not:

(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms as defined under §151.002(a)(13) of the Medical Practice Act;

(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification and is currently certified.

*n

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

§184.30. Procedural Rules.

(a) For purposes of this subchapter and in accordance with §205.351 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

*n

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

SUBCHAPTER E. ACUDETOX SPECIALISTS.

§184.35. Definitions.

Auricular Acudetox means an acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points are the liver, kidney, lung, sympathetic and shen men.

§184.36. Acudetox Certification.

(a) An Acudetox certificate may be issued in accordance with §205.303 of the Act, and the applicant must submit:

- (1) a board required application form;
- (2) the required fee of \$52.00, and additional fees and surcharges as applicable;
- (3) proof of completion of auricular acupuncture at least 70 hours in length that includes a clean needle technique course or equivalent universal infection control precaution procedures course; and
- (4) other documentation deemed necessary to process an application.

(b) In accordance with §205.303(d) of the Act, a certificate may be renewed by submitting:

- (1) a board required renewal form;
- (2) payment of the renewal fee of \$87.50, and additional fees and surcharges as applicable;
- (3) completing at least three hours of Continuing Auricular Acupuncture Education for Acudetox Specialists and other courses are designated or otherwise approved for credit by the board; and
- (4) other documentation deemed necessary to process a renewal.

(c) Failure to renew certificate before expiration date but less than a year will be a \$25.00 fee plus the required renewal fee.

(d) Certificates expired for a year are automatically canceled.

§184.37. Other Requirements Related to Acudetox Practice.

(a) Certificate-holders must keep a current mailing and practice address on file with the Texas Medical Board and provide notice of any address change within ten days of such change.

(b) Certificate holders may only use the titles "Certified Acudetox Specialist" or "C.A.S."

(c) Failure to comply with laws and rules related to Acudetox may result in loss of certification.

Figure 1:22 TAC §184.25(a)(8)

Patient Notification Statement Concerning the Physician Evaluation

I (patient's name) _____, am notifying the
acupuncturist (practitioner's name) _____ of the following:

___ Yes ___ No I have been evaluated by a physician or dentist for the condition being
treated within 12 months before the acupuncture was performed. I recognize that I should
be evaluated by a physician or dentist for the condition being treated by the acupuncturist.

___ Yes ___ No I have received a referral from my chiropractor within the last 30 days for
acupuncture.

Patient Signature _____ Date _____