

1 **SENATE FLOOR VERSION**

2 March 29, 2021

3 ENGROSSED HOUSE
4 BILL NO. 1102

5 By: Olsen, West (Rick), Hardin
6 (David), Boles, Conley,
7 Smith, West (Kevin),
8 Humphrey, Russ, Stark,
9 Crosswhite Hader, McDugle,
10 Grego, Wolfley, Kendrix,
11 Mize, O'Donnell, Lawson,
12 Stearman, Gann, Dobrinski,
13 Patzkowsky, West (Tammy),
14 Manger, Roberts (Sean),
15 Lepak, Dills and Steagall
16 of the House

17 and

18 Daniels, Bullard and Allen
19 of the Senate

20 An Act relating to physician licensure; amending 59
21 O.S. 2011, Sections 509, as last amended by Section
22 36, Chapter 161, O.S.L. 2020, and 637, as last
23 amended by Section 42, Chapter 161, O.S.L. 2020 (59
24 O.S. Supp. 2020, Sections 509 and 637), which relate
to unprofessional conduct; updating statutory term;
broadening certain definitions to include certain
acts; providing exceptions; providing penalties;
directing Office of the Attorney General to calculate
certain costs; requiring reporting of certain
records; providing for enforcement and effect under
certain circumstances; providing for noncodification;
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last
2 amended by Section 36, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020,
3 Section 509), is amended to read as follows:

4 Section 509. The words "unprofessional conduct" as used in
5 Sections 481 through 518.1 of this title are hereby declared to
6 include, but shall not be limited to, the following:

7 1. Procuring, aiding or abetting a criminal operation;

8 2. The obtaining of any fee or offering to accept any fee,
9 present or other form of remuneration whatsoever, on the assurance
10 or promise that a manifestly incurable disease can or will be cured;

11 3. Willfully betraying a professional secret to the detriment
12 of the patient;

13 4. Habitual intemperance or the habitual use of habit-forming
14 drugs;

15 5. Conviction or confession of, or plea of guilty, nolo
16 contendere, no contest or Alford plea to a felony or any offense
17 involving moral turpitude;

18 6. All advertising of medical business in which statements are
19 made which are grossly untrue or improbable and calculated to
20 mislead the public;

21 7. Conviction or confession of, or plea of guilty, nolo
22 contendere, no contest or Alford plea to a crime involving violation
23 of:

24

- a. the antinarcotic or prohibition laws and regulations of the federal government,
- b. the laws of this state,
- c. State ~~Board~~ Commissioner of Health rules, or
- d. a determination by a judge or jury;

8. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public;

9. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct;

10. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs;

11. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs;

12. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship and not prescribing in a safe, medically accepted manner;

1 13. The violation, or attempted violation, direct or indirect,
2 of any of the provisions of the Oklahoma Allopathic Medical and
3 Surgical Licensure and Supervision Act, either as a principal,
4 accessory or accomplice;

5 14. Aiding or abetting, directly or indirectly, the practice of
6 medicine by any person not duly authorized under the laws of this
7 state;

8 15. The inability to practice medicine with reasonable skill
9 and safety to patients by reason of age, illness, drunkenness,
10 excessive use of drugs, narcotics, chemicals, or any other type of
11 material or as a result of any mental or physical condition. In
12 enforcing this section the State Board of Medical Licensure and
13 Supervision may, upon probable cause, request a physician to submit
14 to a mental or physical examination by physicians designated by it.
15 If the physician refuses to submit to the examination, the Board
16 shall issue an order requiring the physician to show cause why the
17 physician will not submit to the examination and shall schedule a
18 hearing on the order within thirty (30) days after notice is served
19 on the physician, exclusive of the day of service. The physician
20 shall be notified by either personal service or by certified mail
21 with return receipt requested. At the hearing, the physician and
22 the physician's attorney are entitled to present any testimony and
23 other evidence to show why the physician should not be required to
24 submit to the examination. After a complete hearing, the Board

1 shall issue an order either requiring the physician to submit to the
2 examination or withdrawing the request for examination. The medical
3 license of a physician ordered to submit for examination may be
4 suspended until the results of the examination are received and
5 reviewed by the Board;

6 16. a. Prescribing, dispensing or administering of controlled
7 substances or narcotic drugs in excess of the amount
8 considered good medical practice,

9 b. prescribing, dispensing or administering controlled
10 substances or narcotic drugs without medical need in
11 accordance with pertinent licensing board standards,
12 or

13 c. prescribing, dispensing or administering opioid drugs
14 in excess of the maximum limits authorized in Section
15 2-309I of Title 63 of the Oklahoma Statutes;

16 17. Engaging in physical conduct with a patient which is sexual
17 in nature, or in any verbal behavior which is seductive or sexually
18 demeaning to a patient;

19 18. Failure to maintain an office record for each patient which
20 accurately reflects the evaluation, treatment, and medical necessity
21 of treatment of the patient;

22 19. Failure to provide necessary ongoing medical treatment when
23 a doctor-patient relationship has been established, which
24

1 relationship can be severed by either party providing a reasonable
2 period of time is granted; ~~or~~

3 20. Performance of an abortion as defined by Section 1-730 of
4 Title 63 of the Oklahoma Statutes, except for an abortion necessary
5 to prevent the death of the mother or to prevent substantial or
6 irreversible physical impairment of the mother that substantially
7 increases the risk of death. The performance of an abortion on the
8 basis of the mental or emotional health of the mother shall be a
9 violation of this paragraph, notwithstanding a claim or diagnosis
10 that the woman may engage in conduct which she intends to result in
11 her death. The Board shall impose a penalty as provided in Section
12 509.1 of this title on a licensee who violates this paragraph. The
13 penalty shall include, but not be limited to, suspension of the
14 license for a period of not less than one (1) year; or

15 21. Failure to provide a proper and safe medical facility
16 setting and qualified assistive personnel for a recognized medical
17 act, including but not limited to an initial in-person patient
18 examination, office surgery, diagnostic service or any other medical
19 procedure or treatment. Adequate medical records to support
20 diagnosis, procedure, treatment or prescribed medications must be
21 produced and maintained.

22 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as last
23 amended by Section 42, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020,
24 Section 637), is amended to read as follows:

1 Section 637. A. The State Board of Osteopathic Examiners may
2 refuse to admit a person to an examination or may refuse to issue or
3 reinstate or may suspend or revoke any license issued or reinstated
4 by the Board upon proof that the applicant or holder of such a
5 license:

6 1. Has obtained a license, license renewal or authorization to
7 sit for an examination, as the case may be, through fraud,
8 deception, misrepresentation or bribery; or has been granted a
9 license, license renewal or authorization to sit for an examination
10 based upon a material mistake of fact;

11 2. Has engaged in the use or employment of dishonesty, fraud,
12 misrepresentation, false promise, false pretense, unethical conduct
13 or unprofessional conduct, as may be determined by the Board, in the
14 performance of the functions or duties of an osteopathic physician,
15 including but not limited to the following:

16 a. obtaining or attempting to obtain any fee, charge,
17 tuition or other compensation by fraud, deception or
18 misrepresentation; willfully and continually
19 overcharging or overtreating patients; or charging for
20 visits to the physician's office which did not occur
21 or for services which were not rendered,

22 b. using intimidation, coercion or deception to obtain or
23 retain a patient or discourage the use of a second
24 opinion or consultation,

- 1 c. willfully performing inappropriate or unnecessary
2 treatment, diagnostic tests or osteopathic medical or
3 surgical services,
- 4 d. delegating professional responsibilities to a person
5 who is not qualified by training, skill, competency,
6 age, experience or licensure to perform them, noting
7 that delegation may only occur within an appropriate
8 doctor-patient relationship, wherein a proper patient
9 record is maintained including, but not limited to, at
10 the minimum, a current history and physical,
- 11 e. misrepresenting that any disease, ailment, or
12 infirmity can be cured by a method, procedure,
13 treatment, medicine or device,
- 14 f. acting in a manner which results in final disciplinary
15 action by any professional society or association or
16 hospital or medical staff of such hospital in this or
17 any other state, whether agreed to voluntarily or not,
18 if the action was in any way related to professional
19 conduct, professional competence, malpractice or any
20 other violation of the Oklahoma Osteopathic Medicine
21 Act,
- 22 g. signing a blank prescription form; or dispensing,
23 prescribing, administering or otherwise distributing
24 any drug, controlled substance or other treatment

1 without sufficient examination or the establishment of
2 a physician-patient relationship, or for other than
3 medically accepted therapeutic or experimental or
4 investigational purpose duly authorized by a state or
5 federal agency, or not in good faith to relieve pain
6 and suffering, or not to treat an ailment, physical
7 infirmity or disease, or violating any state or
8 federal law on controlled dangerous substances
9 including, but not limited to, prescribing, dispensing
10 or administering opioid drugs in excess of the maximum
11 limits authorized in Section 2-309I of Title 63 of the
12 Oklahoma Statutes,

13 h. engaging in any sexual activity within a physician-
14 patient relationship,

15 i. terminating the care of a patient without adequate
16 notice or without making other arrangements for the
17 continued care of the patient,

18 j. failing to furnish a copy of a patient's medical
19 records upon a proper request from the patient or
20 legal agent of the patient or another physician; or
21 failing to comply with any other law relating to
22 medical records,

23 k. failing to comply with any subpoena issued by the
24 Board,

1 1. violating a probation agreement or order with this
2 Board or any other agency, and

3 m. failing to keep complete and accurate records of
4 purchase and disposal of controlled drugs or narcotic
5 drugs;

6 3. Has engaged in gross negligence, gross malpractice or gross
7 incompetence;

8 4. Has engaged in repeated acts of negligence, malpractice or
9 incompetence;

10 5. Has been finally adjudicated and found guilty, or entered a
11 plea of guilty or nolo contendere in a criminal prosecution, for any
12 offense reasonably related to the qualifications, functions or
13 duties of an osteopathic physician, whether or not sentence is
14 imposed, and regardless of the pendency of an appeal;

15 6. Has had the authority to engage in the activities regulated
16 by the Board revoked, suspended, restricted, modified or limited, or
17 has been reprimanded, warned or censured, probated or otherwise
18 disciplined by any other state or federal agency whether or not
19 voluntarily agreed to by the physician including, but not limited
20 to, the denial of licensure, surrender of the license, permit or
21 authority, allowing the license, permit or authority to expire or
22 lapse, or discontinuing or limiting the practice of osteopathic
23 medicine pending disposition of a complaint or completion of an
24 investigation;

1 7. Has violated~~7~~ or failed to comply with provisions of any act
2 or regulation administered by the Board;

3 8. Is incapable, for medical or psychiatric or any other good
4 cause, of discharging the functions of an osteopathic physician in a
5 manner consistent with the public's health, safety and welfare;

6 9. Has been guilty of advertising by means of knowingly false
7 or deceptive statements;

8 10. Has been guilty of advertising, practicing, or attempting
9 to practice under a name other than one's own;

10 11. Has violated or refused to comply with a lawful order of
11 the Board;

12 12. Has been guilty of habitual drunkenness, or habitual
13 addiction to the use of morphine, cocaine or other habit-forming
14 drugs;

15 13. Has been guilty of personal offensive behavior, which would
16 include, but not be limited to, obscenity, lewdness, and
17 molestation; ~~and~~

18 14. Has performed an abortion as defined by Section 1-730 of
19 Title 63 of the Oklahoma Statutes, except for an abortion necessary
20 to prevent the death of the mother or to prevent substantial or
21 irreversible physical impairment of the mother that substantially
22 increases the risk of death. The performance of an abortion on the
23 basis of the mental or emotional health of the mother shall be a
24 violation of this paragraph, notwithstanding a claim or diagnosis

1 that the woman may engage in conduct which she intends to result in
2 her death. The Board shall impose a penalty as provided in this
3 section and in Section 637.1 of this title on a licensee who
4 violates this paragraph. The penalty shall include, but not be
5 limited to, suspension of the license for a period of not less than
6 one (1) year; or

7 15. Has been adjudicated to be insane, or incompetent, or
8 admitted to an institution for the treatment of psychiatric
9 disorders.

10 B. The State Board of Osteopathic Examiners shall neither
11 refuse to renew, nor suspend, nor revoke any license, however, for
12 any of these causes, unless the person accused has been given at
13 least twenty (20) days' notice in writing of the charge against him
14 or her and a public hearing by the Board; provided, three-fourths
15 (3/4) of a quorum present at a meeting may vote to suspend a license
16 in an emergency situation if the licensee affected is provided a
17 public hearing within thirty (30) days of the emergency suspension.

18 C. The State Board of Osteopathic Examiners shall have the
19 power to order or subpoena the attendance of witnesses, the
20 inspection of records and premises and the production of relevant
21 books and papers for the investigation of matters that may come
22 before them. The presiding officer of the Board shall have the
23 authority to compel the giving of testimony as is conferred on
24 courts of justice.

1 D. Any osteopathic physician in the State of Oklahoma whose
2 license to practice osteopathic medicine is revoked or suspended
3 under this section shall have the right to seek judicial review of a
4 ruling of the Board pursuant to the Administrative Procedures Act.

5 E. The Board may enact rules and regulations pursuant to the
6 Administrative Procedures Act setting out additional acts of
7 unprofessional conduct, which acts shall be grounds for refusal to
8 issue or reinstate, or for action to condition, suspend or revoke a
9 license.

10 SECTION 3. NEW LAW A new section of law not to be
11 codified in the Oklahoma Statutes reads as follows:

12 In the event that any provision of Section 509 or 637 of Title
13 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of
14 this act, is challenged in court in any action alleging violation of
15 either the Constitution of the United States of America or the State
16 of Oklahoma, the Office of the Attorney General shall determine the
17 amount of state or local funds expended to defend such action. Such
18 determination shall include the number of hours of time spent by any
19 public employee in such defense multiplied by the rate of
20 compensation paid to such employee, as well as the costs of any
21 outside counsel paid for such purpose, and shall include both direct
22 and indirect costs. The Office of the Attorney General shall report
23 such amounts for each calendar quarter to all members of the
24 Legislature.

1 SECTION 4. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 In the event that any provision of Section 509 or 637 of Title
4 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of
5 this act, is ever temporarily or permanently restrained or enjoined
6 by court order, the remaining provisions of such section shall be
7 enforced as though the restrained or enjoined provisions had not
8 been adopted; provided, however, if such temporary or permanent
9 restraining order or injunction is stayed, dissolved or otherwise
10 ceases to have effect, such provisions shall have full force and
11 effect.

12 SECTION 5. This act shall become effective November 1, 2021.

13 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
14 March 29, 2021 - DO PASS
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