

1                     **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                     STATE OF OKLAHOMA

3                                     1st Session of the 57th Legislature (2019)

4 HOUSE BILL 1182

                                   By: Olsen and **Moore** of the  
   House

5  
6   and

7   **Allen** of the Senate

8  
9   AS INTRODUCED

10  
11                     An Act relating to physician licensure; amending 59  
12                     O.S. 2011, Sections 509, as amended by Section 2,  
13                     Chapter 175, O.S.L. 2018 and 637 (59 O.S. Supp. 2018,  
14                     Section 509), which relate to unprofessional conduct;  
15                     broadening certain definitions to include certain  
16                     acts; amending 63 O.S. 2011, Section 1-731, which  
17                     relates to abortion; prohibiting issuance or renewal  
18                     of physician license for certain acts; requiring  
19                     State Board of Medical Licensure and Supervision and  
20                     State Board of Osteopathic Examiners to revoke  
21                     licenses for certain acts; providing exceptions;  
22                     directing promulgation of rules; directing Office of  
23                     the Attorney General to calculate certain costs;  
24                     requiring reporting of certain records; providing for  
                                   codification; and providing an effective date.

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

                   SECTION 1.             AMENDATORY             59 O.S. 2011, Section 509, as  
amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018,  
Section 509), is amended to read as follows:

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

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

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

8 3. Willfully betraying a professional secret to the detriment  
9 of the patient;

10 4. Habitual intemperance or the habitual use of habit-forming  
11 drugs;

12 5. Conviction of a felony or of any offense involving moral  
13 turpitude;

14 6. All advertising of medical business in which statements are  
15 made which are grossly untrue or improbable and calculated to  
16 mislead the public;

17 7. Conviction or confession of a crime involving violation of:

18 a. the antinarcotic or prohibition laws and regulations

19 of the federal government,

20 b. the laws of this state, or

21 c. State Board of Health rules;

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

24

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

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

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

13           12. Prescribing or administering a drug or treatment without  
14 sufficient examination and the establishment of a valid physician-  
15 patient relationship;

16           13. The violation, or attempted violation, direct or indirect,  
17 of any of the provisions of the Oklahoma Allopathic Medical and  
18 Surgical Licensure and Supervision Act, either as a principal,  
19 accessory or accomplice;

20           14. Aiding or abetting, directly or indirectly, the practice of  
21 medicine by any person not duly authorized under the laws of this  
22 state;

23           15. The inability to practice medicine with reasonable skill  
24 and safety to patients by reason of age, illness, drunkenness,

1 excessive use of drugs, narcotics, chemicals, or any other type of  
2 material or as a result of any mental or physical condition. In  
3 enforcing this subsection the State Board of Medical Licensure and  
4 Supervision may, upon probable cause, request a physician to submit  
5 to a mental or physical examination by physicians designated by it.  
6 If the physician refuses to submit to the examination, the Board  
7 shall issue an order requiring the physician to show cause why the  
8 physician will not submit to the examination and shall schedule a  
9 hearing on the order within thirty (30) days after notice is served  
10 on the physician. The physician shall be notified by either  
11 personal service or by certified mail with return receipt requested.  
12 At the hearing, the physician and the physician's attorney are  
13 entitled to present any testimony and other evidence to show why the  
14 physician should not be required to submit to the examination.  
15 After a complete hearing, the Board shall issue an order either  
16 requiring the physician to submit to the examination or withdrawing  
17 the request for examination. The medical license of a physician  
18 ordered to submit for examination may be suspended until the results  
19 of the examination are received and reviewed by the Board;

- 20 16. a. Prescribing, dispensing or administering of controlled  
21 substances or narcotic drugs in excess of the amount  
22 considered good medical practice,  
23 b. prescribing, dispensing or administering controlled  
24 substances or narcotic drugs without medical need in

1 accordance with pertinent licensing board standards,  
2 or

3 c. prescribing, dispensing or administering opioid drugs  
4 in excess of the maximum dosage authorized under  
5 Section ~~5~~ 2-309I of ~~this act~~ Title 63;

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

9 18. Failure to maintain an office record for each patient which  
10 accurately reflects the evaluation, treatment, and medical necessity  
11 of treatment of the patient;

12 19. Failure to provide necessary ongoing medical treatment when  
13 a doctor-patient relationship has been established, which  
14 relationship can be severed by either party providing a reasonable  
15 period of time is granted; ~~or~~

16 20. Performance of an abortion as defined by Section 1-730 of  
17 Title 63 of the Oklahoma Statutes, except that an abortion necessary  
18 to prevent the death of the pregnant woman or to prevent a serious  
19 risk of substantial and irreversible impairment of a major bodily  
20 function of the pregnant woman shall not be grounds for denial or  
21 revocation of a medical license. No such condition may be  
22 determined to exist if it is based on a claim or diagnosis that the  
23 woman may engage in conduct which she intends to result in her  
24 death; or

1        21. Failure to provide a proper and safe medical facility  
2 setting and qualified assistive personnel for a recognized medical  
3 act, including but not limited to an initial in-person patient  
4 examination, office surgery, diagnostic service or any other medical  
5 procedure or treatment. Adequate medical records to support  
6 diagnosis, procedure, treatment or prescribed medications must be  
7 produced and maintained.

8        SECTION 2.        AMENDATORY        59 O.S. 2011, Section 637, is  
9 amended to read as follows:

10        Section 637. A. The State Board of Osteopathic Examiners may  
11 refuse to admit a person to an examination or may refuse to issue or  
12 reinstate or may suspend or revoke any license issued or reinstated  
13 by the Board upon proof that the applicant or holder of such a  
14 license:

15        1. Has obtained a license, license renewal or authorization to  
16 sit for an examination, as the case may be, through fraud,  
17 deception, misrepresentation or bribery; or has been granted a  
18 license, license renewal or authorization to sit for an examination  
19 based upon a material mistake of fact;

20        2. Has engaged in the use or employment of dishonesty, fraud,  
21 misrepresentation, false promise, false pretense, unethical conduct  
22 or unprofessional conduct, as may be determined by the Board, in the  
23 performance of the functions or duties of an osteopathic physician,  
24 including but not limited to the following:

- 1 a. obtaining or attempting to obtain any fee, charge,  
2 tuition or other compensation by fraud, deception or  
3 misrepresentation; willfully and continually  
4 overcharging or overtreating patients; or charging for  
5 visits to the physician's office which did not occur  
6 or for services which were not rendered,
- 7 b. using intimidation, coercion or deception to obtain or  
8 retain a patient or discourage the use of a second  
9 opinion or consultation,
- 10 c. willfully performing inappropriate or unnecessary  
11 treatment, diagnostic tests or osteopathic medical or  
12 surgical services,
- 13 d. delegating professional responsibilities to a person  
14 who is not qualified by training, skill, competency,  
15 age, experience or licensure to perform them, noting  
16 that delegation may only occur within an appropriate  
17 doctor/patient relationship, wherein a proper patient  
18 record is maintained including, but not limited to, at  
19 the minimum, a current history and physical,
- 20 e. misrepresenting that any disease, ailment, or  
21 infirmity can be cured by a method, procedure,  
22 treatment, medicine or device,
- 23 f. acting in a manner which results in final disciplinary  
24 action by any professional society or association or

1 hospital or medical staff of such hospital in this or  
2 any other state, whether agreed to voluntarily or not,  
3 if the action was in any way related to professional  
4 conduct, professional competence, malpractice or any  
5 other violation of the Oklahoma Osteopathic Medicine  
6 Act,

- 7 g. signing a blank prescription form; or dispensing,  
8 prescribing, administering or otherwise distributing  
9 any drug, controlled substance or other treatment  
10 without sufficient examination or the establishment of  
11 a physician/patient relationship, or for other than  
12 medically accepted therapeutic or experimental or  
13 investigational purpose duly authorized by a state or  
14 federal agency, or not in good faith to relieve pain  
15 and suffering, or not to treat an ailment, physical  
16 infirmity or disease, or violating any state or  
17 federal law on controlled dangerous substances,
- 18 h. engaging in any sexual activity within a  
19 physician/patient relationship,
- 20 i. terminating the care of a patient without adequate  
21 notice or without making other arrangements for the  
22 continued care of the patient,
- 23 j. failing to furnish a copy of a patient's medical  
24 records upon a proper request from the patient or



1 legal agent of the patient or another physician; or  
2 failing to comply with any other law relating to  
3 medical records,

4 k. failing to comply with any subpoena issued by the  
5 Board,

6 l. violating a probation agreement or order with this  
7 Board or any other agency, and

8 m. failing to keep complete and accurate records of  
9 purchase and disposal of controlled drugs or narcotic  
10 drugs;

11 3. Has engaged in gross negligence, gross malpractice or gross  
12 incompetence;

13 4. Has engaged in repeated acts of negligence, malpractice or  
14 incompetence;

15 5. Has been finally adjudicated and found guilty, or entered a  
16 plea of guilty or nolo contendere in a criminal prosecution, for any  
17 offense reasonably related to the qualifications, functions or  
18 duties of an osteopathic physician, or for any offense involving  
19 moral turpitude, whether or not sentence is imposed, and regardless  
20 of the pendency of an appeal;

21 6. Has had the authority to engage in the activities regulated  
22 by the Board revoked, suspended, restricted, modified or limited, or  
23 has been reprimanded, warned or censured, probated or otherwise  
24 disciplined by any other state or federal agency whether or not

1 voluntarily agreed to by the physician including, but not limited  
2 to, the denial of licensure, surrender of the license, permit or  
3 authority, allowing the license, permit or authority to expire or  
4 lapse, or discontinuing or limiting the practice of osteopathic  
5 medicine pending disposition of a complaint or completion of an  
6 investigation;

7 7. Has violated, or failed to comply with provisions of any act  
8 or regulation administered by the Board;

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

12 9. Has been guilty of advertising by means of knowingly false  
13 or deceptive statements;

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

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

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

21 13. Has been guilty of personal offensive behavior, which would  
22 include, but not be limited to obscenity, lewdness, molestation and  
23 other acts of moral turpitude; and

24

1       14. Has performed an abortion as defined by Section 1-730 of  
2 Title 63 of the Oklahoma Statutes, except that an abortion necessary  
3 to prevent the death of the pregnant woman or to prevent a serious  
4 risk of substantial and irreversible impairment of a major bodily  
5 function of the pregnant woman shall not be grounds for denial or  
6 revocation of a medical license. No such condition may be  
7 determined to exist if it is based on a claim or diagnosis that the  
8 woman may engage in conduct which she intends to result in her  
9 death; and

10       15. Has been adjudicated to be insane, or incompetent, or  
11 admitted to an institution for the treatment of psychiatric  
12 disorders.

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

22       C. The State Board of Osteopathic Examiners shall have the  
23 power to order or subpoena the attendance of witnesses, the  
24 inspection of records and premises and the production of relevant

1 books and papers for the investigation of matters that may come  
2 before them. The presiding officer of said Board shall have the  
3 authority to compel the giving of testimony as is conferred on  
4 courts of justice.

5 D. Any osteopathic physician in the State of Oklahoma whose  
6 license to practice osteopathic medicine is revoked or suspended  
7 under the previous paragraphs of this section shall have the right  
8 to seek judicial review of a ruling of the Board pursuant to the  
9 Administrative Procedures Act.

10 E. The Board may enact rules and regulations pursuant to the  
11 Administrative Procedures Act setting out additional acts of  
12 unprofessional conduct; which acts shall be grounds for refusal to  
13 issue or reinstate, or for action to condition, suspend or revoke a  
14 license.

15 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-731, is  
16 amended to read as follows:

17 Section 1-731. A. No person shall perform or induce an  
18 abortion upon a pregnant woman ~~unless that person is a physician~~  
19 ~~licensed to practice medicine in the State of Oklahoma.~~ Any person,  
20 other than a physician licensed to practice medicine in the State of  
21 Oklahoma, violating this section shall be guilty of a felony  
22 punishable by imprisonment for not less than one (1) year nor more  
23 than three (3) years in the State Penitentiary.

24

1       B. Any physician licensed to practice medicine in the State of  
2 Oklahoma participating in the performance of an abortion, except as  
3 provided in Section 1-732 of Title 63 of the Oklahoma Statutes,  
4 shall have his or her license to practice medicine in this state  
5 suspended for a minimum of six (6) months and shall be fined a  
6 minimum of Five Hundred Dollars (\$500.00). The State Board of  
7 Medical Licensure and Supervision shall revoke the license of an  
8 allopathic physician performing an abortion in this state. The  
9 State Board of Osteopathic Examiners shall revoke the license of an  
10 osteopathic physician performing an abortion in this state. For the  
11 purposes of this section, "abortion" shall have the same meaning  
12 provided by Section 1-730 of this title, except that an abortion  
13 necessary to prevent the death of the pregnant woman or to prevent a  
14 serious risk of substantial and irreversible impairment of a major  
15 bodily function of the pregnant woman shall not be grounds for  
16 denial or revocation of a medical license. No such condition may be  
17 determined to exist if it is based on a claim or diagnosis that the  
18 woman may engage in conduct which she intends to result in her  
19 death.

20       C. No person shall perform or induce an abortion upon a  
21 pregnant woman subsequent to the end of the first trimester of her  
22 pregnancy, unless such abortion is performed or induced in a general  
23 hospital.

24

1        D. The State Board of Medical Licensure and Supervision, State  
2 Board of Osteopathic Examiners and State Board of Health shall  
3 promulgate rules to implement the provisions of this act.

4            SECTION 4.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1-731.3 of Title 63, unless  
6 there is created a duplication in numbering, reads as follows:

7            In the event that any provision of Sections 509 and 637 of Title  
8 59 of the Oklahoma Statutes and Section 1-731 of Title 63 of the  
9 Oklahoma Statutes are challenged in court in any action alleging  
10 violation of either the Constitution of the United States of America  
11 or the State of Oklahoma, the Office of the Attorney General shall  
12 determine the amount of state or local funds expended to defend such  
13 action. Such determination shall include the number of hours of  
14 time spent by any public employee in such defense multiplied by the  
15 rate of compensation paid to such employee, as well as the costs of  
16 any outside counsel paid for such purpose, and shall include both  
17 direct and indirect costs. The Office of the Attorney General shall  
18 report such amounts for each calendar quarter to all members of the  
19 Legislature.

20            SECTION 5. This act shall become effective November 1, 2019.

21  
22 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/20/2019 -  
23 DO PASS, As Coauthored.