

1 ENGROSSED HOUSE  
2 BILL NO. 2339

By: Ritze of the House

and

Yen of the Senate

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6  
7 An Act relating to professions and occupations;  
8 amending 59 O.S. 2011, Sections 509, 512, as amended  
9 by Section 3, Chapter 176, O.S.L. 2014, 513 and 518.1  
10 (59 O.S. Supp. 2016, Section 512), which relate to  
11 the Oklahoma Allopathic Medical and Surgical  
12 Licensure and Supervision Act; modifying certain  
13 definition; permitting Board to contract with  
14 agencies to perform administrative services;  
15 permitting Board investigators to perform certain  
16 services; providing that licensees shall be deemed to  
17 have given consent for Board investigators to inspect  
18 certain records; permitting application for search  
19 warrant; permitting Board investigators to  
20 investigate records to determine if licensee is in  
21 compliance with certain laws; providing that Board  
22 investigators meeting certain qualifications have  
23 jurisdiction to perform certain duties; deleting  
24 requirement that physician's license be revoked upon  
final felony conviction after exhaustion of appellate  
process; deleting requirement that suspension or  
revocation of license for certain conviction be based  
on the merits; permitting certain program to employ  
director for certain purpose and to fix salary;  
permitting program to contract with certain entities;  
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, is  
amended to read as follows:

1 Section 509. The words "unprofessional conduct" as used in  
2 Sections 481 through 514 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 or confession of, or plea of guilty, nolo  
13 contendere, no contest or Alford plea to a felony or of any offense  
14 involving moral turpitude;

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

18 7. Conviction or confession of, or plea of guilty, nolo  
19 contendere, no contest or Alford plea to a crime involving violation  
20 of:

- 21 a. the antinarcotic or prohibition laws and regulations
- 22 of the federal government,
- 23 b. the laws of this state, or
- 24 c. State Board of Health rules;

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

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

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

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

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

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

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

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

22       16. Prescribing, dispensing or administering of controlled  
23 substances or narcotic drugs in excess of the amount considered good  
24 medical practice, or prescribing, dispensing or administering

1 controlled substances or narcotic drugs without medical need in  
2 accordance with published standards;

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

6 18. Failure to maintain an office record for each patient which  
7 accurately reflects the evaluation, treatment, and medical necessity  
8 of treatment of the patient;

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

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

20 SECTION 2. AMENDATORY 59 O.S. 2011, Section 512, as  
21 amended by Section 3, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2016,  
22 Section 512), is amended to read as follows:

23 Section 512. The secretary of the State Board of Medical  
24 Licensure and Supervision shall be paid an annual salary in an

1 amount fixed by the Board. The Board shall have the authority to  
2 expend such funds as are necessary in carrying out the duties of the  
3 Board and shall have the authority to hire all necessary personnel,  
4 at salaries to be fixed by the Board, as the Board shall deem  
5 necessary. The Board shall have the authority to hire attorneys to  
6 represent the Board in all legal matters and to assist authorized  
7 state and county officers in prosecuting or restraining violations  
8 of Section 481 et seq. of this title, and to fix the salaries or per  
9 diem of said attorneys.

10 The Board shall have the authority to hire one or more  
11 investigators as may be necessary to carry out the provisions of  
12 this act at an annual salary to be fixed by the Board. Such  
13 investigators may be commissioned peace officers of this state. In  
14 addition such investigators shall have the authority and duty to  
15 investigate and inspect the records of all persons in order to  
16 determine whether or not a disciplinary action for unprofessional  
17 misconduct is warranted or whether the narcotic laws or the  
18 dangerous drug laws have been complied with.

19 The Board is specifically authorized to contract with state  
20 agencies or other bodies to perform investigative services or other  
21 administrative services at a rate set by the Board.

22 The Board is authorized to pay the travel expenses of Board  
23 employees and members in accordance with the State Travel  
24 Reimbursement Act.

1       The expenditures authorized herein shall not be a charge against  
2 the state, but the same shall be paid solely from the Board's  
3 depository fund.

4       SECTION 3.       NEW LAW       A new section of law to be codified  
5 in the Oklahoma Statutes as Section 512.1 of Title 59, unless there  
6 is created a duplication in numbering, reads as follows:

7       A.   Investigators for the State Board of Medical Licensure and  
8 Supervision shall perform such services as are necessary in the  
9 investigation of criminal activity or preparation of administrative  
10 actions.

11       B.   Any licensee subject to the provisions of the Oklahoma  
12 Allopathic Medical and Surgical Licensure and Supervision Act shall  
13 be deemed to have given consent to any duly authorized investigator  
14 of the Board to access, enter or inspect the records, either on-site  
15 or at the Board office or facilities of such licensee or applicant  
16 subject to the Oklahoma Allopathic Medical and Surgical Licensure  
17 and Supervision Act. Refusal to allow such access, entry or  
18 inspection may constitute grounds for the denial, nonrenewal,  
19 suspension or revocation of a license. Upon refusal of such access,  
20 entry or inspection, pursuant to this section, the Board or a duly  
21 authorized representative may make application for and obtain a  
22 search warrant from the district court where the facility or records  
23 are located to allow such access, entry or inspection.

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1 C. Investigators shall also have the authority and duty to  
2 investigate and inspect the records of all persons in order to  
3 determine whether the licensee is in compliance with applicable  
4 narcotics and dangerous drug laws and regulations.

5 D. Any investigator certified as a peace officer by the Council  
6 on Law Enforcement Education and Training shall have statewide  
7 jurisdiction to perform the duties authorized by this section. In  
8 addition, the investigator shall be considered a peace officer and  
9 shall have the powers now or hereafter vested by law in peace  
10 officers.

11 SECTION 4. AMENDATORY 59 O.S. 2011, Section 513, is  
12 amended to read as follows:

13 Section 513. A. 1. The State Board of Medical Licensure and  
14 Supervision is hereby given quasi-judicial powers while sitting as a  
15 Board for the purpose of revoking, suspending or imposing other  
16 disciplinary actions upon the license of physicians or surgeons of  
17 this state, and appeals from its decisions shall be taken to the  
18 Supreme Court of this state within thirty (30) days of the date that  
19 a copy of the decision is mailed to the appellant, as shown by the  
20 certificate of mailing attached to the decision.

21 2. The license of any physician or surgeon who has been  
22 convicted of any felony in or without the State of Oklahoma and  
23 whether in a state or federal court, may be suspended by the Board  
24 upon the submission thereto of a certified copy of the judgment and



1 sentence of the trial court and the certificate of the clerk of the  
2 court of the conviction.

3 3. Upon proof of a ~~final~~ felony conviction by the courts ~~and~~  
4 ~~after exhaustion of the appellate process,~~ the Board shall revoke  
5 the physician's license. If the felony conviction is overturned on  
6 appeal and no other appeals are sought, the Board shall restore the  
7 license of the physician. ~~Suspension or revocation of the license~~  
8 ~~of any person convicted of a felony on any other grounds than that~~  
9 ~~of moral turpitude or the violation of the federal or state narcotic~~  
10 ~~laws, shall be on the merits of the particular case, but the court~~  
11 Court records in the trial of such case when of such a conviction  
12 ~~has been had~~ shall be prima facie evidence of the conviction.

13 4. The Board shall also revoke and cancel the license of any  
14 physician or surgeon who has been charged in a court of record of  
15 this or other states of the United States or in the federal court  
16 with the commission of a felony and who is a fugitive from justice,  
17 upon the submission of a certified copy of the charge together with  
18 a certificate from the clerk of the court that after the commitment  
19 of the crime the physician or surgeon fled from the jurisdiction of  
20 the court and is a fugitive from justice.

21 B. To the extent necessary to allow the Board the power to  
22 enforce disciplinary actions imposed by the Board, in the exercise  
23 of its authority, the Board may punish willful violations of its  
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1 orders and impose additional penalties as allowed by Section 509.1  
2 of this title.

3 SECTION 5. AMENDATORY 59 O.S. 2011, Section 518.1, is  
4 amended to read as follows:

5 Section 518.1 A. There is hereby established the Allied  
6 Professional Peer Assistance Program to rehabilitate allied medical  
7 professionals whose competency may be compromised because of the  
8 abuse of drugs or alcohol, so that such allied medical professionals  
9 can be treated and can return to or continue the practice of allied  
10 medical practice in a manner which will benefit the public. The  
11 program shall be under the supervision and control of the State  
12 Board of Medical Licensure and Supervision.

13 B. The Board may appoint one or more peer assistance evaluation  
14 advisory committees, hereinafter called the "allied peer assistance  
15 committees". Each of these committees shall be composed of members,  
16 the majority of which shall be licensed allied medical professionals  
17 with expertise in chemical dependency. The allied peer assistance  
18 committees shall function under the authority of the State Board of  
19 Medical Licensure and Supervision in accordance with the rules of  
20 the Board. The program may be one hundred percent (100%) outsourced  
21 to professional groups specialized in this arena. The committee  
22 members shall serve without pay, but may be reimbursed for the  
23 expenses incurred in the discharge of their official duties in  
24 accordance with the State Travel Reimbursement Act.

1 C. The Board may appoint and employ a qualified person or  
2 persons to serve as program coordinators and shall fix such person's  
3 compensation. The program may employ a director for purposes of  
4 ongoing nonclerical administrative duties and shall fix the  
5 director's compensation. The Board shall define the duties of the  
6 program coordinators and director who shall report directly to the  
7 Board.

8 D. The Board is authorized to adopt and revise rules, not  
9 inconsistent with the Oklahoma Allopathic Medical and Surgical  
10 Licensure and Supervision Act, as may be necessary to enable it to  
11 carry into effect the provisions of this section.

12 E. A portion of licensing fees for each allied profession, not  
13 to exceed Ten Dollars (\$10.00), may be used to implement and  
14 maintain the Allied Professional Peer Assistance Program.

15 F. All monies paid pursuant to subsection E of this section  
16 shall be deposited in an agency special account revolving fund under  
17 the State Board of Medical Licensure and Supervision, and shall be  
18 used for the general operating expenses of the Allied Professional  
19 Peer Assistance Program, including payment of personal services.

20 G. Records and management information system of the  
21 professionals enrolled in the Allied Professional Peer Assistance  
22 Program and reports shall be maintained in the program office in a  
23 place separate and apart from the records of the Board. The records  
24 shall be made public only by subpoena and court order; provided

1 however, confidential treatment shall be cancelled upon default by  
2 the professional in complying with the requirements of the program.

3 H. Any person making a report to the Board or to an allied peer  
4 assistance committee regarding a professional suspected of  
5 practicing allied medical practice while habitually intemperate or  
6 addicted to the use of habit-forming drugs, or a professional's  
7 progress or lack of progress in rehabilitation, shall be immune from  
8 any civil or criminal action resulting from such reports, provided  
9 such reports are made in good faith.

10 I. A professional's participation in the Allied Professional  
11 Peer Assistance Program in no way precludes additional proceedings  
12 by the Board for acts or omissions of acts not specifically related  
13 to the circumstances resulting in the professional's entry into the  
14 program. However, in the event the professional defaults from the  
15 program, the Board may discipline the professional for those acts  
16 which led to the professional entering the program.

17 J. The Executive Director of the Board shall suspend the  
18 license immediately upon notification that the licensee has  
19 defaulted from the Allied Professional Peer Assistance Program, and  
20 shall assign a hearing date for the matter to be presented to the  
21 Board.

22 K. All treatment information, whether or not recorded, and all  
23 communications between a professional and therapist are both  
24 privileged and confidential. In addition, the identity of all

1 persons who have received or are receiving treatment services shall  
2 be considered confidential and privileged.

3 L. As used in this section, unless the context otherwise  
4 requires:

5 1. "Board" means the State Board of Medical Licensure and  
6 Supervision; and

7 2. "Allied peer assistance committee" means the peer assistance  
8 evaluation advisory committee created in this section, which is  
9 appointed by the State Board of Medical Licensure and Supervision to  
10 carry out specified duties.

11 M. The Allied Professional Peer Assistance Program may contract  
12 with outside entities for services that are not available to it or  
13 can be obtained for a lesser cost through such a contract. The  
14 contract shall be ratified by the Board.

15 SECTION 6. This act shall become effective November 1, 2017.

16 Passed the House of Representatives the 20th day of March, 2017.

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19 Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2017.

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24 Presiding Officer of the Senate

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