

An Act

ENROLLED HOUSE
BILL NO. 2518

By: Ownbey of the House

and

Simpson and Pittman of the
Senate

An Act relating to professions and occupations; amending 59 O.S. 2011, Section 567.8, as last amended by Section 3, Chapter 281, O.S.L. 2017 (59 O.S. Supp. 2017, Section 567.8), which relates to certain powers of the Oklahoma Board of Nursing; providing that certain material mailed to an individual's address of record be deemed legally served; amending 59 O.S. 2011, Section 567.18, as amended by Section 4, Chapter 228, O.S.L. 2013 (59 O.S. Supp. 2017, Section 567.18), which relates to criminal background checks; requiring individual applying for multistate license to submit to criminal background check; providing certain exception; and providing an effective date.

SUBJECT: Oklahoma Nursing Practice Act

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 567.8, as last amended by Section 3, Chapter 281, O.S.L. 2017 (59 O.S. Supp. 2017, Section 567.8), is amended to read as follows:

Section 567.8 A. The Oklahoma Board of Nursing shall have the power to take any or all of the following actions:

1. To deny, revoke or suspend any:
 - a. licensure to practice as a Licensed Practical Nurse, single-state or multistate,

- b. licensure to practice as a Registered Nurse, single-state or multistate,
- c. multistate privilege to practice in Oklahoma,
- d. licensure to practice as an Advanced Practice Registered Nurse,
- e. certification to practice as an Advanced Unlicensed Assistant,
- f. authorization for prescriptive authority, or
- g. authority to order, select, obtain and administer drugs;

2. To assess administrative penalties; and

3. To otherwise discipline applicants, licensees or Advanced Unlicensed Assistants.

B. The Board shall impose a disciplinary action against the person pursuant to the provisions of subsection A of this section upon proof that the person:

1. Is guilty of deceit or material misrepresentation in procuring or attempting to procure:

- a. a license to practice registered nursing, licensed practical nursing, and/or a license to practice advanced practice registered nursing with or without either prescriptive authority recognition or authorization to order, select, obtain and administer drugs, or

b. certification as an Advanced Unlicensed Assistant;

2. Is guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of any licensee or Advanced Unlicensed Assistant, or any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed, or any conduct resulting in the revocation of a deferred or suspended sentence or probation imposed pursuant to such conviction;

3. Fails to adequately care for patients or to conform to the minimum standards of acceptable nursing or Advanced Unlicensed Assistant practice that, in the opinion of the Board, unnecessarily exposes a patient or other person to risk of harm;

4. Is intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients;

5. Exhibits through a pattern of practice or other behavior actual or potential inability to practice nursing with sufficient knowledge or reasonable skills and safety due to impairment caused by illness, use of alcohol, drugs, chemicals or any other substance, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills, mental illness, or disability that results in inability to practice with reasonable judgment, skill or safety; provided, however, the provisions of this paragraph shall not be utilized in a manner that conflicts with the provisions of the Americans with Disabilities Act;

6. Has been adjudicated as mentally incompetent, mentally ill, chemically dependent or dangerous to the public or has been committed by a court of competent jurisdiction, within or without this state;

7. Is guilty of unprofessional conduct as defined in the rules of the Board;

8. Is guilty of any act that jeopardizes a patient's life, health or safety as defined in the rules of the Board;

9. Violated a rule promulgated by the Board, an order of the Board, or a state or federal law relating to the practice of registered, practical or advanced practice registered nursing or advanced unlicensed assisting, or a state or federal narcotics or controlled dangerous substance law;

10. Has had disciplinary actions taken against the individual's registered or practical nursing license, advanced unlicensed assistive certification, or any professional or occupational license, registration or certification in this or any state, territory or country;

11. Has defaulted and/or been terminated from the peer assistance program for any reason;

12. Fails to maintain professional boundaries with patients, as defined in the Board rules; and/or

13. Engages in sexual misconduct, as defined in Board rules, with a current or former patient or key party, inside or outside the health care setting.

C. Any person who supplies the Board information in good faith shall not be liable in any way for damages with respect to giving such information.

D. The Board may cause to be investigated all reported violations of the Oklahoma Nursing Practice Act.

E. The Board may authorize the Executive Director to issue a confidential letter of concern to a licensee when evidence does not warrant formal proceedings, but the Executive Director has noted indications of possible errant conduct that could lead to serious consequences and formal action.

F. All individual proceedings before the Board shall be conducted in accordance with the Administrative Procedures Act.

G. At a hearing the accused shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on behalf of the accused, to cross-examine witnesses and to have subpoenas issued by the designated Board staff. If the accused is found guilty of the charges the Board may refuse to issue a renewal of license to the applicant, revoke or suspend a license, or otherwise discipline a licensee.

H. A person whose license is revoked may not apply for reinstatement during the time period set by the Board. The Board on its own motion may at any time reconsider its action.

I. Any person whose license is revoked or who applies for renewal of registration and who is rejected by the Board shall have the right to appeal from such action pursuant to the Administrative Procedures Act.

J. 1. Any person who has been determined by the Board to have violated any provisions of the Oklahoma Nursing Practice Act or any

rule or order issued pursuant thereto shall be liable for an administrative penalty not to exceed Five Hundred Dollars (\$500.00) for each count for which any holder of a certificate or license has been determined to be in violation of the Oklahoma Nursing Practice Act or any rule promulgated or order issued pursuant thereto.

2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of this section, after notice and an opportunity for hearing is given to the accused. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to practice, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act.

K. The Board shall retain jurisdiction over any person issued a license, certificate or temporary license pursuant to this act, regardless of whether the license, certificate or temporary license has expired, lapsed or been relinquished during or after the alleged occurrence or conduct prescribed by this act.

L. In the event disciplinary action is imposed, any person so disciplined shall be responsible for any and all costs associated with satisfaction of the discipline imposed.

M. In the event disciplinary action is imposed in an administrative proceeding, the Board shall have the authority to recover the monies expended by the Board in pursuing any disciplinary action, including but not limited to costs of investigation, probation or monitoring fees, administrative costs, witness fees, attorney fees and court costs. This authority shall be in addition to the Board's authority to impose discipline as set out in subsection A of this section.

N. The Executive Director shall immediately suspend the license of any person upon proof that the person has been sentenced to a period of continuous incarceration serving a penal sentence for commission of a misdemeanor or felony. The suspension shall remain in effect until the Board acts upon the licensee's written application for reinstatement of the license.

O. When a majority of the officers of the Board, which constitutes the President, Vice President and Secretary/Treasurer,

find that preservation of the public health, safety or welfare requires immediate action, summary suspension of licensure or certification may be ordered before the filing of a sworn complaint or at any other time before the outcome of an individual proceeding. The summary suspension of licensure or certification may be ordered without compliance with the requirements of the Oklahoma Open Meeting Act. Within seven (7) days after the summary suspension, the licensee shall be notified by letter that summary suspension has occurred. The summary suspension letter shall include notice of the date of the proposed hearing to be held in accordance with Oklahoma Administrative Code 485:10-11-2 and the Administrative Procedures Act, within ninety (90) days of the date of the summary suspension letter, and shall be signed by one of the Board officers.

P. In any proceeding in which the Board is required to serve an order on an individual, the Board may send such material to the individual's address of record with the Board. If the order is returned with a notation by the United States Postal Service indicating that it is undeliverable for any reason, and the records of the Board indicate that the Board has not received any change of address since the order was sent, as required by the rules of the Board, the order and any subsequent material relating to the same matter sent to the most recent address on file with the Board shall be deemed by the court as having been legally served for all purposes.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 567.18, as amended by Section 4, Chapter 228, O.S.L. 2013 (59 O.S. Supp. 2017, Section 567.18), is amended to read as follows:

Section 567.18 A. The criminal background check shall include a criminal history records search conducted by the Oklahoma State Bureau of Investigation that is not more than ninety (90) days old.

B. Contingent upon available resources by the Board, all criminal background checks effective January 1, 2013, are subject to the following:

1. Submission of a full set of fingerprints to the Board for the purpose of permitting a state and federal criminal history records search pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and Public Law 92-544 that is not more than ninety (90) days old. The Oklahoma State Bureau of Investigation may exchange these fingerprints with the Federal Bureau of Investigation;

2. The applicant shall furnish the Board fingerprints as established by Board rules and a money order or cashier's check made payable to the Oklahoma State Bureau of Investigation or the Board's designated vendor;

3. The Board shall forward the fingerprints along with the applicable fee for a national fingerprint criminal history records search to the Bureau;

4. The Bureau shall retain one set of fingerprints in the Automated Fingerprint Identification System and submit the other set to the FBI for a national criminal history records search;

5. Any and all state and federal criminal history record information obtained by the Board from the Bureau or the FBI which is not already a matter of public record shall be deemed nonpublic. The confidential information shall be restricted to the exclusive use of the Board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure; and

6. Fingerprint images may be rejected by the OSBI and the FBI for a variety of reasons, including, but not limited to, fingerprint quality or an inability by the OSBI or FBI to classify the fingerprints. These rejections require the applicant to be fingerprinted again. Applicants with fingerprints rejected for improper registration will be required to re-register, re-pay and be re-fingerprinted. Applicant is responsible for insuring and verifying that all data is correct in the fingerprinting process.

C. The necessary steps to initiate the criminal background checks may be performed by the Board or its designated vendor.

D. An individual applying for any type of multistate license shall submit to a criminal background check that complies with this section; provided, however, that if the individual has been continuously enrolled in the Federal Bureau of Investigation's Rap Back Service since issuance of the initial multistate license, the individual shall not be required to undergo another criminal history record search.

SECTION 3. This act shall become effective November 1, 2018.

Passed the House of Representatives the 8th day of March, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____