

1 ENGROSSED SENATE  
2 BILL NO. 1552

By: Dahm, Sharp, Allen and  
Brecheen of the Senate

3 and

4 Brumbaugh, Strohm, Moore  
5 and Bennett of the House

6  
7 An Act relating to physician licensure; amending 59  
8 O.S. 2011, Sections 509 and 637, which relate to  
9 unprofessional conduct; broadening certain  
10 definitions to include certain acts; amending 63 O.S.  
11 2011, Sections 1-730 and 1-731, which relate to  
12 abortion; broadening certain exceptions; prohibiting  
13 issuance or renewal of physician license for certain  
14 acts; requiring State Board of Medical Licensure and  
15 Supervision and State Board of Osteopathic Examiners  
16 to revoke licenses for certain acts; providing  
17 certain exceptions; directing promulgation of rules;  
18 directing Office of the Attorney General to calculate  
19 certain costs; requiring reporting of certain  
20 records; providing for noncodification; and providing  
21 an effective date.

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

23 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, is  
24 amended to read as follows:

Section 509. The words "unprofessional conduct" as used in  
Sections 481 through 514 of this title are hereby declared to  
include, but shall not be limited to, the following:

1. Procuring, aiding or abetting a criminal operation;

- 1        2. The obtaining of any fee or offering to accept any fee,  
2 present or other form of remuneration whatsoever, on the assurance  
3 or promise that a manifestly incurable disease can or will be cured;
- 4        3. Willfully betraying a professional secret to the detriment  
5 of the patient;
- 6        4. Habitual intemperance or the habitual use of habit-forming  
7 drugs;
- 8        5. Conviction of a felony or of any offense involving moral  
9 turpitude;
- 10       6. All advertising of medical business in which statements are  
11 made which are grossly untrue or improbable and calculated to  
12 mislead the public;
- 13       7. Conviction or confession of a crime involving violation of:  
14           a. the antinarcotic or prohibition laws and regulations  
15             of the federal government,  
16           b. the laws of this state, or  
17           c. State Board of Health rules;
- 18       8. Dishonorable or immoral conduct which is likely to deceive,  
19 defraud, or harm the public;
- 20       9. The commission of any act which is a violation of the  
21 criminal laws of any state when such act is connected with the  
22 physician's practice of medicine. A complaint, indictment or  
23 confession of a criminal violation shall not be necessary for the  
24 enforcement of this provision. Proof of the commission of the act

1 while in the practice of medicine or under the guise of the practice  
2 of medicine shall be unprofessional conduct;

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

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

8 12. Prescribing or administering a drug or treatment without  
9 sufficient examination and the establishment of a valid physician-  
10 patient relationship;

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

15 14. Aiding or abetting, directly or indirectly, the practice of  
16 medicine by any person not duly authorized under the laws of this  
17 state;

18 15. The inability to practice medicine with reasonable skill  
19 and safety to patients by reason of age, illness, drunkenness,  
20 excessive use of drugs, narcotics, chemicals, or any other type of  
21 material or as a result of any mental or physical condition. In  
22 enforcing this subsection the State Board of Medical Licensure and  
23 Supervision may, upon probable cause, request a physician to submit  
24 to a mental or physical examination by physicians designated by it.

1 If the physician refuses to submit to the examination, the Board  
2 shall issue an order requiring the physician to show cause why the  
3 physician will not submit to the examination and shall schedule a  
4 hearing on the order within thirty (30) days after notice is served  
5 on the physician. The physician shall be notified by either  
6 personal service or by certified mail with return receipt requested.  
7 At the hearing, the physician and the physician's attorney are  
8 entitled to present any testimony and other evidence to show why the  
9 physician should not be required to submit to the examination.  
10 After a complete hearing, the Board shall issue an order either  
11 requiring the physician to submit to the examination or withdrawing  
12 the request for examination. The medical license of a physician  
13 ordered to submit for examination may be suspended until the results  
14 of the examination are received and reviewed by the Board;

15 16. Prescribing, dispensing or administering of controlled  
16 substances or narcotic drugs in excess of the amount considered good  
17 medical practice, or prescribing, dispensing or administering  
18 controlled substances or narcotic drugs without medical need in  
19 accordance with published standards;

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

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1 18. Failure to maintain an office record for each patient which  
2 accurately reflects the evaluation, treatment, and medical necessity  
3 of treatment of the patient;

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

8 20. Performance of an abortion as defined by Section 1-730 of  
9 Title 63 of the Oklahoma Statutes; or

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

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

19 Section 637. A. The State Board of Osteopathic Examiners may  
20 refuse to admit a person to an examination or may refuse to issue or  
21 reinstate or may suspend or revoke any license issued or reinstated  
22 by the Board upon proof that the applicant or holder of such a  
23 license:

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1 1. Has obtained a license, license renewal or authorization to  
2 sit for an examination, as the case may be, through fraud,  
3 deception, misrepresentation or bribery; or has been granted a  
4 license, license renewal or authorization to sit for an examination  
5 based upon a material mistake of fact;

6 2. Has engaged in the use or employment of dishonesty, fraud,  
7 misrepresentation, false promise, false pretense, unethical conduct  
8 or unprofessional conduct, as may be determined by the Board, in the  
9 performance of the functions or duties of an osteopathic physician,  
10 including but not limited to the following:

- 11 a. obtaining or attempting to obtain any fee, charge,  
12 tuition or other compensation by fraud, deception or  
13 misrepresentation; willfully and continually  
14 overcharging or overtreating patients; or charging for  
15 visits to the physician's office which did not occur  
16 or for services which were not rendered,
- 17 b. using intimidation, coercion or deception to obtain or  
18 retain a patient or discourage the use of a second  
19 opinion or consultation,
- 20 c. willfully performing inappropriate or unnecessary  
21 treatment, diagnostic tests or osteopathic medical or  
22 surgical services,
- 23 d. delegating professional responsibilities to a person  
24 who is not qualified by training, skill, competency,

1 age, experience or licensure to perform them, noting  
2 that delegation may only occur within an appropriate  
3 doctor/patient relationship, wherein a proper patient  
4 record is maintained including, but not limited to, at  
5 the minimum, a current history and physical,

6 e. misrepresenting that any disease, ailment, or  
7 infirmity can be cured by a method, procedure,  
8 treatment, medicine or device,

9 f. acting in a manner which results in final disciplinary  
10 action by any professional society or association or  
11 hospital or medical staff of such hospital in this or  
12 any other state, whether agreed to voluntarily or not,  
13 if the action was in any way related to professional  
14 conduct, professional competence, malpractice or any  
15 other violation of the Oklahoma Osteopathic Medicine  
16 Act,

17 g. signing a blank prescription form; or dispensing,  
18 prescribing, administering or otherwise distributing  
19 any drug, controlled substance or other treatment  
20 without sufficient examination or the establishment of  
21 a physician/patient relationship, or for other than  
22 medically accepted therapeutic or experimental or  
23 investigational purpose duly authorized by a state or  
24 federal agency, or not in good faith to relieve pain

1 and suffering, or not to treat an ailment, physical  
2 infirmity or disease, or violating any state or  
3 federal law on controlled dangerous substances,

4 h. engaging in any sexual activity within a  
5 physician/patient relationship,

6 i. terminating the care of a patient without adequate  
7 notice or without making other arrangements for the  
8 continued care of the patient,

9 j. failing to furnish a copy of a patient's medical  
10 records upon a proper request from the patient or  
11 legal agent of the patient or another physician; or  
12 failing to comply with any other law relating to  
13 medical records,

14 k. failing to comply with any subpoena issued by the  
15 Board,

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

18 m. failing to keep complete and accurate records of  
19 purchase and disposal of controlled drugs or narcotic  
20 drugs;

21 3. Has engaged in gross negligence, gross malpractice or gross  
22 incompetence;

23 4. Has engaged in repeated acts of negligence, malpractice or  
24 incompetence;



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

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

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

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

22           9. Has been guilty of advertising by means of knowingly false  
23 or deceptive statements;

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

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

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

8        13. Has been guilty of personal offensive behavior, which would  
9 include, but not be limited to obscenity, lewdness, molestation and  
10 other acts of moral turpitude; ~~and~~

11        14. Has performed an abortion as defined by Section 1-730 of  
12 Title 63 of the Oklahoma Statutes; and

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

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

1 C. The State Board of Osteopathic Examiners shall have the  
2 power to order or subpoena the attendance of witnesses, the  
3 inspection of records and premises and the production of relevant  
4 books and papers for the investigation of matters that may come  
5 before them. The presiding officer of said Board shall have the  
6 authority to compel the giving of testimony as is conferred on  
7 courts of justice.

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

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

18 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-730, is  
19 amended to read as follows:

20 Section 1-730. A. As used in this article:

21 1. "Abortion" means the use or prescription of any instrument,  
22 medicine, drug, or any other substance or device intentionally to  
23 terminate the pregnancy of a female known to be pregnant with an  
24 intention other than to increase the probability of a live birth, to

1 preserve the life or health of the child after live birth, to  
2 preserve the life or health of the mother, to remove an ectopic  
3 pregnancy, or to remove a dead unborn child who died as the result  
4 of a spontaneous miscarriage, accidental trauma, or a criminal  
5 assault on the pregnant female or her unborn child;

6 2. "Attempt to perform an abortion" means an act, or an  
7 omission of a statutorily required act, that under the circumstances  
8 as the actor believes them to be constitutes a substantial step in a  
9 course of conduct planned to culminate in the performance of an  
10 abortion;

11 3. "Certified technician" means a Registered Diagnostic Medical  
12 Sonographer who is certified in obstetrics and gynecology by the  
13 American Registry for Diagnostic Medical Sonography (ARDMS) or a  
14 Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics  
15 with certification in obstetrical ultrasonography;

16 4. "Unborn child" means the unborn offspring of human beings  
17 from the moment of conception, through pregnancy, and until live  
18 birth including the human conceptus, zygote, morula, blastocyst,  
19 embryo and fetus;

20 5. "Unemancipated minor" means any person less than eighteen  
21 (18) years of age who is not or has not been married or who is under  
22 the care, custody, and control of the person's parent or parents,  
23 guardian, or juvenile court of competent jurisdiction;

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1       6. "Viable" means potentially able to live outside of the womb  
2 of the mother upon premature birth, whether resulting from natural  
3 causes or an abortion;

4       7. "Conception" means the fertilization of the ovum of a female  
5 individual by the sperm of a male individual;

6       8. "Health" means physical or mental health;

7       9. "Department" means the State Department of Health; and

8       10. "Inducing an abortion" means the administration by any  
9 person, including the pregnant woman, of any substance designed or  
10 intended to cause an expulsion of the unborn child, effecting an  
11 abortion as defined above.

12       B. Nothing contained herein shall be construed in any manner to  
13 include any birth control device or medication or sterilization  
14 procedure.

15       SECTION 4.        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 violating this section shall be guilty of a felony punishable by  
21 imprisonment for not less than one (1) year nor more than three (3)  
22 years in the State Penitentiary.

23       B. Any physician participating in the performance of an  
24 abortion shall be prohibited from obtaining or renewing a license to

1 practice medicine in this state. The State Board of Medical  
2 Licensure and Supervision shall revoke the license of an allopathic  
3 physician performing an abortion in this state. The State Board of  
4 Osteopathic Examiners shall revoke the license of an osteopathic  
5 physician performing an abortion in this state. For the purposes of  
6 this section, "abortion" shall have the same meaning provided by  
7 Section 1-730 of this title.

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

12 D. The State Board of Medical Licensure and Supervision, State  
13 Board of Osteopathic Examiners, and State Board of Health shall  
14 promulgate rules to implement the provisions of this act.

15 SECTION 5. NEW LAW A new section of law not to be  
16 codified in the Oklahoma Statutes reads as follows:

17 In the event that any provision of this act is challenged in  
18 court in any action alleging a violation of either the Constitution  
19 of the United States of America or the State of Oklahoma, the Office  
20 of the Attorney General shall determine the amount of state or local  
21 funds expended to defend such action. Such determination shall  
22 include the number of hours of time spent by any public employee in  
23 such defense multiplied by the rate of compensation paid to such  
24 employee, as well as the costs of any outside counsel paid for such

1 purpose, and shall include both direct and indirect costs. The  
2 Office of the Attorney General shall report such amounts for each  
3 calendar quarter to all members of the Legislature.

4 SECTION 6. This act shall become effective November 1, 2016.

5 Passed the Senate the 8th day of March, 2016.

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\_\_\_\_\_  
Presiding Officer of the Senate

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9 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

10 2016.

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Presiding Officer of the House  
of Representatives

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