

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 719

By: Garvin

AS INTRODUCED

An Act relating to the practice of nursing; amending 59 O.S. 2021, Section 567.8, which relates to denial, revocation, or suspension of license or certification; removing requirement for the Oklahoma Board of Nursing to impose disciplinary action on certain grounds; modifying and adding grounds for disciplinary action; requiring disciplinary action for commission of certain criminal offenses; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2021, 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~~ may 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, 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 substantially related to the qualifications, functions or duties of any licensee or Advanced Unlicensed Assistant, or any offense an essential element

1 of which is fraud, dishonesty, or an act of violence, whether or not
2 sentence is imposed, or any conduct resulting in the revocation of a
3 deferred or suspended sentence or probation imposed pursuant to such
4 conviction. For the purposes of this paragraph, "substantially
5 related" means the nature of criminal conduct for which the person
6 was convicted has a direct bearing on the fitness or ability to
7 perform one or more of the duties or responsibilities necessarily
8 related to the occupation;

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

13 4. Is ~~intemperate in the use of~~ found to be misusing or abusing
14 alcohol or drugs, which ~~use~~ misuse or abuse the Board determines
15 endangers or could endanger patients;

16 5. Is found to be misusing or abusing alcohol or drugs, which
17 misuse or abuse the Board determines does not endanger and could not
18 endanger patients. However, the Board shall not impose a
19 disciplinary action against the person pursuant to the provisions of
20 subsection A of this section solely on the basis of this paragraph
21 if the person can show proof of actively participating in substance
22 abuse treatment or counseling or if the person agrees to participate
23 in the Board's peer assistance program under Section 567.17 of this
24 title;

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

12 ~~6.~~ 7. Has been adjudicated as mentally incompetent, mentally
13 ill, chemically dependent or dangerous to the public or has been
14 committed by a court of competent jurisdiction, within or without
15 this state;

16 ~~7.~~ 8. Is guilty of unprofessional conduct as defined in the
17 rules of the Board;

18 ~~8.~~ 9. Is guilty of any act that jeopardizes a patient's life,
19 health or safety as defined in the rules of the Board;

20 ~~9.~~ 10. Violated a rule promulgated by the Board, an order of
21 the Board, or a state or federal law relating to the practice of
22 registered, practical or advanced practice registered nursing or
23 advanced unlicensed assisting, or a state or federal narcotics or
24 controlled dangerous substance law including, but not limited to
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1 prescribing, dispensing or administering opioid drugs in excess of
2 the maximum limits authorized in Section 2-309I of Title 63 of the
3 Oklahoma Statutes;

4 ~~10.~~ 11. Has had disciplinary actions taken against the
5 individual's registered or practical nursing license, advanced
6 unlicensed assistive certification, or any professional or
7 occupational license, registration or certification in this or any
8 state, territory or country;

9 ~~11.~~ 12. Has defaulted or been terminated from the peer
10 assistance program for any reason;

11 ~~12.~~ 13. Fails to maintain professional boundaries with
12 patients, as defined in the Board rules; or

13 ~~13.~~ 14. Engages in sexual misconduct, as defined in Board
14 rules, with a current or former patient or key party, inside or
15 outside the health care setting.

16 C. 1. If the results of a criminal history records search
17 conducted under Section 567.18 of this title reveal that the subject
18 person has been convicted of, pled guilty or no contest to, or
19 received a deferred sentence for, a felony or misdemeanor offense
20 for any of the following offenses in any state or federal
21 jurisdiction, the Board shall revoke or deny all applicable
22 licenses, privileges, certifications, authorizations, and authority
23 listed in paragraph 1 of subsection A of this section:
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- 1 a. abuse, neglect, or financial exploitation of any
2 person entrusted to the care or possession of such
3 person,
- 4 b. rape, incest, sodomy, or any crime that resulted in
5 the person being registered on a sex offender registry
6 at any time,
- 7 c. child abuse,
- 8 d. murder or attempted murder,
- 9 e. manslaughter,
- 10 f. kidnapping,
- 11 g. human trafficking,
- 12 h. aggravated assault and battery,
- 13 i. assault and battery with a dangerous weapon, or
- 14 j. arson in the first degree.

15 2. If less than five (5) years have elapsed since the
16 completion of a sentence, and the results of a criminal history
17 records search reveal that the subject person has been convicted of,
18 or pled guilty or no contest to, a felony or misdemeanor offense for
19 any of the following offenses, in any state or federal jurisdiction,
20 the Board shall revoke or deny all applicable licenses, privileges,
21 certifications, authorizations, and authority listed in paragraph 1
22 of subsection A of this section:

- 23 a. assault,
- 24 b. battery,

- 1 c. indecent exposure and indecent exhibition, except
2 where such offense disqualifies the applicant as a
3 registered sex offender,
- 4 d. pandering,
- 5 e. burglary in the first or second degree,
- 6 f. robbery in the first or second degree,
- 7 g. robbery or attempted robbery with a dangerous weapon,
8 or imitation firearm,
- 9 h. arson in the second degree,
- 10 i. unlawful manufacture, distribution, prescription, or
11 dispensing of a Schedule I through V drug as defined
12 by the Uniform Controlled Dangerous Substances Act,
- 13 j. grand larceny, or
- 14 k. petit larceny or shoplifting.

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

18 ~~D.~~ E. The Board may cause to be investigated all reported
19 violations of the Oklahoma Nursing Practice Act. Information
20 obtained during an investigation into possible violations of the
21 Oklahoma Nursing Practice Act shall be kept confidential, but may be
22 introduced by the state in administrative proceedings before the
23 Board, whereupon the information admitted becomes a public record.

1 Public records maintained by the agency are administrative records,
2 not public civil or criminal records.

3 Confidential investigative records shall not be subject to
4 discovery or subpoena in any civil or criminal proceeding, except
5 that the Board may give such information to law enforcement and
6 other state agencies as necessary and appropriate in the discharge
7 of the duties of that agency and only under circumstances that
8 ensure against unauthorized access to the information.

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

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

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

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

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

8 ~~J.~~ K. 1. Any person who has been determined by the Board to
9 have violated any provisions of the Oklahoma Nursing Practice Act or
10 any rule or order issued pursuant thereto shall be liable for an
11 administrative penalty not to exceed Five Hundred Dollars (\$500.00)
12 for each count for which any holder of a certificate or license has
13 been determined to be in violation of the Oklahoma Nursing Practice
14 Act or any rule promulgated or order issued pursuant thereto.

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

1 ~~K.~~ L. The Board shall retain jurisdiction over any person
2 issued a license, certificate or temporary license pursuant to the
3 Oklahoma Nursing Practice Act, regardless of whether the license,
4 certificate or temporary license has expired, lapsed or been
5 relinquished during or after the alleged occurrence or conduct
6 prescribed by the Oklahoma Nursing Practice Act.

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

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

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

1 ~~Θ.~~ P. When a majority of the officers of the Board, which
2 constitutes the President, Vice President and Secretary/Treasurer,
3 find that preservation of the public health, safety or welfare
4 requires immediate action, summary suspension of licensure or
5 certification may be ordered before the filing of a sworn complaint
6 or at any other time before the outcome of an individual proceeding.
7 The summary suspension of licensure or certification may be ordered
8 without compliance with the requirements of the Oklahoma Open
9 Meeting Act. Within seven (7) days after the summary suspension,
10 the licensee shall be notified by letter that summary suspension has
11 occurred. The summary suspension letter shall include notice of the
12 date of the proposed hearing to be held in accordance with Oklahoma
13 Administrative Code 485:10-11-2 and the Administrative Procedures
14 Act, within ninety (90) days of the date of the summary suspension
15 letter, and shall be signed by one of the Board officers.

16 ~~P.~~ Q. In any proceeding in which the Board is required to serve
17 an order on an individual, the Board may send such material to the
18 individual's address of record with the Board. If the order is
19 returned with a notation by the United States Postal Service
20 indicating that it is undeliverable for any reason, and the records
21 of the Board indicate that the Board has not received any change of
22 address since the order was sent, as required by the rules of the
23 Board, the order and any subsequent material relating to the same
24 matter sent to the most recent address on file with the Board shall

1 be deemed by the court as having been legally served for all
2 purposes.

3 SECTION 2. This act shall become effective November 1, 2023.

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