

1 ENGROSSED SENATE
2 BILL NO. 723

By: Dahm, Bullard, Rogers and
Taylor of the Senate

3 and

4 Olsen and Gann of the House

5
6
7 [abortion - fetal heartbeat - penalties -
8 codification - effective date]
9

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

11 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last
12 amended by Section 36, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020,
13 Section 509), is amended to read as follows:

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

- 17 1. Procuring, aiding or abetting a criminal operation;
- 18 2. The obtaining of any fee or offering to accept any fee,
19 present or other form of remuneration whatsoever, on the assurance
20 or promise that a manifestly incurable disease can or will be cured;
- 21 3. Willfully betraying a professional secret to the detriment
22 of the patient;
- 23 4. Habitual intemperance or the habitual use of habit-forming
24 drugs;

1 5. Conviction or confession of, or plea of guilty, nolo
2 contendere, no contest or Alford plea to a felony or any offense
3 involving moral turpitude;

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

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

10 a. the antinarcotic or prohibition laws and regulations
11 of the federal government,

12 b. the laws of this state,

13 c. State Board of Health rules, or

14 d. a determination by a judge or jury;

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

17 9. The commission of any act which is a violation of the
18 criminal laws of any state when such act is connected with the
19 physician's practice of medicine. A complaint, indictment or
20 confession of a criminal violation shall not be necessary for the
21 enforcement of this provision. Proof of the commission of the act
22 while in the practice of medicine or under the guise of the practice
23 of medicine shall be unprofessional conduct;

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

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

6 12. Prescribing or administering a drug or treatment without
7 sufficient examination and the establishment of a valid physician-
8 patient relationship and not prescribing in a safe, medically
9 accepted manner;

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

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

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

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

- 15 16. a. Prescribing, dispensing or administering of controlled
16 substances or narcotic drugs in excess of the amount
17 considered good medical practice,
18 b. prescribing, dispensing or administering controlled
19 substances or narcotic drugs without medical need in
20 accordance with pertinent licensing board standards,
21 or
22 c. prescribing, dispensing or administering opioid drugs
23 in excess of the maximum limits authorized in Section
24 2-309I of Title 63 of the Oklahoma Statutes;

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

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

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

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

18 21. Violation of the provisions of the Heartbeat Informed
19 Consent Act.

20 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as last
21 amended by Section 42, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020,
22 Section 637), is amended to read as follows:

23 Section 637. A. The State Board of Osteopathic Examiners may
24 refuse to admit a person to an examination or may refuse to issue or

1 reinstate or may suspend or revoke any license issued or reinstated
2 by the Board upon proof that the applicant or holder of such a
3 license:

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

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

14 a. obtaining or attempting to obtain any fee, charge,
15 tuition or other compensation by fraud, deception or
16 misrepresentation; willfully and continually
17 overcharging or overtreating patients; or charging for
18 visits to the physician's office which did not occur
19 or for services which were not rendered,

20 b. using intimidation, coercion or deception to obtain or
21 retain a patient or discourage the use of a second
22 opinion or consultation,
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- 1 c. willfully performing inappropriate or unnecessary
2 treatment, diagnostic tests or osteopathic medical or
3 surgical services,
- 4 d. delegating professional responsibilities to a person
5 who is not qualified by training, skill, competency,
6 age, experience or licensure to perform them, noting
7 that delegation may only occur within an appropriate
8 doctor-patient relationship, wherein a proper patient
9 record is maintained including, but not limited to, at
10 the minimum, a current history and physical,
- 11 e. misrepresenting that any disease, ailment, or
12 infirmity can be cured by a method, procedure,
13 treatment, medicine or device,
- 14 f. acting in a manner which results in final disciplinary
15 action by any professional society or association or
16 hospital or medical staff of such hospital in this or
17 any other state, whether agreed to voluntarily or not,
18 if the action was in any way related to professional
19 conduct, professional competence, malpractice or any
20 other violation of the Oklahoma Osteopathic Medicine
21 Act,
- 22 g. signing a blank prescription form; or dispensing,
23 prescribing, administering or otherwise distributing
24 any drug, controlled substance or other treatment

1 without sufficient examination or the establishment of
2 a physician-patient relationship, or for other than
3 medically accepted therapeutic or experimental or
4 investigational purpose duly authorized by a state or
5 federal agency, or not in good faith to relieve pain
6 and suffering, or not to treat an ailment, physical
7 infirmity or disease, or violating any state or
8 federal law on controlled dangerous substances
9 including, but not limited to, prescribing, dispensing
10 or administering opioid drugs in excess of the maximum
11 limits authorized in Section 2-309I of Title 63 of the
12 Oklahoma Statutes,

13 h. engaging in any sexual activity within a physician-
14 patient relationship,

15 i. terminating the care of a patient without adequate
16 notice or without making other arrangements for the
17 continued care of the patient,

18 j. failing to furnish a copy of a patient's medical
19 records upon a proper request from the patient or
20 legal agent of the patient or another physician; or
21 failing to comply with any other law relating to
22 medical records,

23 k. failing to comply with any subpoena issued by the
24 Board,

1 1. violating a probation agreement or order with this
2 Board or any other agency, and

3 m. failing to keep complete and accurate records of
4 purchase and disposal of controlled drugs or narcotic
5 drugs;

6 3. Has engaged in gross negligence, gross malpractice or gross
7 incompetence;

8 4. Has engaged in repeated acts of negligence, malpractice or
9 incompetence;

10 5. Has been finally adjudicated and found guilty, or entered a
11 plea of guilty or nolo contendere in a criminal prosecution, for any
12 offense reasonably related to the qualifications, functions or
13 duties of an osteopathic physician, whether or not sentence is
14 imposed, and regardless of the pendency of an appeal;

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

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

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

6 9. Has been guilty of advertising by means of knowingly false
7 or deceptive statements;

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

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

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

15 13. Has been guilty of personal offensive behavior, which would
16 include, but not be limited to obscenity, lewdness and molestation;
17 and

18 14. Has been adjudicated to be insane, or incompetent, or
19 admitted to an institution for the treatment of psychiatric
20 disorders; and

21 15. Has violated the provisions of the Heartbeat Informed
22 Consent Act.

23 B. The State Board of Osteopathic Examiners shall neither
24 refuse to renew, nor suspend, nor revoke any license, however, for

1 any of these causes, unless the person accused has been given at
2 least twenty (20) days' notice in writing of the charge against him
3 or her and a public hearing by the Board provided, three-fourths
4 (3/4) of a quorum present at a meeting may vote to suspend a license
5 in an emergency situation if the licensee affected is provided a
6 public hearing within thirty (30) days of the emergency suspension.

7 C. The State Board of Osteopathic Examiners shall have the
8 power to order or subpoena the attendance of witnesses, the
9 inspection of records and premises and the production of relevant
10 books and papers for the investigation of matters that may come
11 before them. The presiding officer of the Board shall have the
12 authority to compel the giving of testimony as is conferred on
13 courts of justice.

14 D. Any osteopathic physician in the State of Oklahoma whose
15 license to practice osteopathic medicine is revoked or suspended
16 under this section shall have the right to seek judicial review of a
17 ruling of the Board pursuant to the Administrative Procedures Act.

18 E. The Board may enact rules and regulations pursuant to the
19 Administrative Procedures Act setting out additional acts of
20 unprofessional conduct; which acts shall be grounds for refusal to
21 issue or reinstate, or for action to condition, suspend or revoke a
22 license.

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1 SECTION 3. AMENDATORY Section 4, Chapter 159, O.S.L.
2 2012 (63 O.S. Supp. 2020, Section 1-745.14), is amended to read as
3 follows:

4 Section 1-745.14. A. Any abortion provider who knowingly
5 performs or induces any abortion shall comply with the requirements
6 of the Heartbeat Informed Consent Act.

7 B. Prior to a woman giving informed consent to having any part
8 of an abortion performed or induced, if the pregnancy is at least
9 ~~eight (8)~~ six (6) weeks after fertilization, the abortion provider
10 who is to perform or induce the abortion or an agent of the abortion
11 provider shall ~~tell the woman that it may be possible to make~~
12 determine if the embryonic or fetal heartbeat of the unborn child is
13 ~~audible for the pregnant woman to hear and ask the woman if she~~
14 ~~would like to hear the heartbeat. If the woman would like to hear~~
15 ~~the heartbeat, the abortion provider shall, using a Doppler fetal~~
16 ~~heart rate monitor, make the embryonic or fetal heartbeat of the~~
17 ~~unborn child audible for the pregnant woman to hear. No physician~~
18 shall perform an abortion if the physician determines the embryonic
19 or fetal heartbeat is audible. An abortion provider, or an agent of
20 the abortion provider shall not be in violation of the requirements
21 of this subsection if:

22 1. The provider or agent has attempted, consistent with
23 standard medical practice, to make the embryonic or fetal heartbeat
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1 of the unborn child audible for the pregnant woman to hear using a
2 Doppler fetal heart rate monitor;

3 2. That attempt does not result in the heartbeat being made
4 audible; and

5 3. The provider has offered to attempt to make the heartbeat
6 audible at a subsequent date.

7 C. Nothing in this section shall be construed to prevent the
8 pregnant woman from not listening to the sounds detected by the
9 Doppler fetal heart rate monitor pursuant to the requirements of
10 subsection B of this section.

11 SECTION 4. AMENDATORY Section 6, Chapter 159, O.S.L.
12 2012 (63 O.S. Supp. 2020, Section 1-745.16), is amended to read as
13 follows:

14 Section 1-745.16. A. Any person who intentionally or
15 recklessly performs or induces an abortion in violation of the
16 Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No
17 penalty shall be assessed against the woman upon whom the abortion
18 is performed or induced or attempted to be performed or induced.

19 B. Any woman upon whom an abortion has been performed or
20 induced in violation of ~~this act~~ the Heartbeat Informed consent Act,
21 or the father of the unborn child who was the subject of such an
22 abortion, may maintain an action against the person who performed or
23 induced the abortion in intentional or reckless violation of this
24 act for actual and punitive damages. Any woman upon whom an

1 abortion has been attempted in violation of this act may maintain an
2 action against the person who attempted to perform or induce the
3 abortion in an intentional or reckless violation of this act for
4 actual and punitive damages.

5 C. A cause of action for injunctive relief against any person
6 who has intentionally or recklessly violated ~~this act~~ the Heartbeat
7 Informed Consent Act may be maintained by the woman upon whom an
8 abortion was performed or induced in violation of this act; by any
9 person who is the spouse, parent, sibling, or guardian of, or a
10 current or former licensed health care provider of, the woman upon
11 whom an abortion has been performed or induced in violation of this
12 act; by a district attorney with appropriate jurisdiction; or by the
13 Attorney General. The injunction shall prevent the abortion
14 provider from performing or inducing further abortions in violation
15 of this act in the state.

16 D. If judgment is rendered in favor of the plaintiff in an
17 action described in this section, the court shall also render
18 judgment for a reasonable attorney fee in favor of the plaintiff
19 against the defendant.

20 E. If judgment is rendered in favor of the defendant and the
21 court finds that the plaintiff's suit was frivolous and brought in
22 bad faith, the court shall also render judgment for a reasonable
23 attorney fee in favor of the defendant against the plaintiff.

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1 F. No damages or attorney fee may be assessed against the woman
2 upon whom an abortion was performed or attempted to be performed or
3 induced except in accordance with subsection E of this section.

4 G. In addition to all other penalties prescribed by this
5 section, a physician who intentionally or recklessly performs or
6 induces an abortion in violation of the Heartbeat Informed Consent
7 Act shall be prohibited from obtaining or renewing a license to
8 practice medicine in this state. The State Board of Medical
9 Licensure and Supervision shall revoke the license of a medical
10 doctor who intentionally or recklessly performs or induces an
11 abortion in violation of the Heartbeat Informed Consent Act. The
12 State Board of Osteopathic Examiners shall revoke the license of a
13 doctor of osteopathy who intentionally or recklessly performs or
14 induces an abortion in violation of the Heartbeat Informed Consent
15 Act.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-745.20 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 If some or all of the provisions of Section 1, 2, 3 or 4 of this
20 act are ever temporarily or permanently restrained or enjoined by
21 court order, the remaining provisions of such section shall be
22 enforced as though the restrained or enjoined provisions had not
23 been adopted; provided, however, if such temporary or permanent
24 restraining order or injunction is stayed or dissolved, or otherwise

1 ceases to have effect, such provisions shall have full force and
2 effect.

3 SECTION 6. This act shall become effective November 1, 2021.
4 Passed the Senate the 10th day of March, 2021.

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Presiding Officer of the Senate

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8 Passed the House of Representatives the ____ day of _____,
9 2021.

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Presiding Officer of the House
of Representatives

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