

An Act

ENROLLED SENATE
BILL NO. 81

By: Simpson of the Senate

and

Newton and Roe of the House

An Act relating to the Oklahoma Nursing Practice Act; amending 59 O.S. 2011, Section 567.4a, as amended by Section 2, Chapter 281, O.S.L. 2017 (59 O.S. Supp. 2018, Section 567.4a), which relates to prescriptive authority recognition; broadening certain education requirement; amending 59 O.S. 2011, Section 567.8, as last amended by Section 1, Chapter 72, O.S.L. 2018 (59 O.S. Supp. 2018, Section 567.8), which relates to denial, revocation or suspension of license or certification; setting forth certain provisions relating to confidential investigative records; updating statutory references; and providing an effective date.

SUBJECT: Nursing

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 567.4a, as amended by Section 2, Chapter 281, O.S.L. 2017 (59 O.S. Supp. 2018, Section 567.4a), is amended to read as follows:

Section 567.4a. The rules regarding prescriptive authority recognition promulgated by the Oklahoma Board of Nursing pursuant to paragraphs 6 through 9, 11 and 12 of Section 567.3a of this title shall:

1. Define the procedure for documenting supervision by a physician licensed in Oklahoma to practice by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners. Such procedure shall include a written statement that defines appropriate referral, consultation, and collaboration between the Advanced Practice Registered Nurse, recognized to prescribe as defined in paragraphs 6 through 9, 11 and 12 of Section 567.3a of this title, and the supervising physician. The written statement shall include a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral. The written statement shall be part of the initial application and the renewal application submitted to the Board for recognition for prescriptive authority for the Advanced Practice Registered Nurse. Changes to the written statement shall be filed with the Board within thirty (30) days of the change and shall be effective on filing;

2. Define minimal requirements for initial application for prescriptive authority which shall include, but not be limited to, evidence of completion of a minimum of forty-five (45) contact hours or three (3) academic credit hours of education in pharmacotherapeutics, clinical application, and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health in a program beyond basic registered nurse preparation, approved by the Board. Such contact hours or academic credits shall be obtained within a time period of three (3) years immediately preceding the date of application for prescriptive authority;

3. Define minimal requirements for application for renewal of prescriptive authority which shall include, but not be limited to, documentation of a minimum of fifteen (15) contact hours or one (1) academic credit hour of education in pharmacotherapeutics, clinical application, and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health in a program beyond basic registered nurse preparation, approved by the Board, within the two-year period immediately preceding the effective date of application for renewal of prescriptive authority;

4. Require that beginning July 1, 2002, an Advanced Practice Registered Nurse shall demonstrate successful completion of a

master's degree or higher in a clinical nurse specialty in order to be eligible for initial application for prescriptive authority under the provisions of ~~this act~~ the Oklahoma Nursing Practice Act;

5. Define the method for communicating authority to prescribe or termination of same, and the formulary to the Board of Pharmacy, all pharmacies, and all registered pharmacists;

6. Define terminology used in such rules;

7. Define the parameters for the prescribing practices of the Advanced Practice Registered Nurse;

8. Define the methods for termination of prescriptive authority for the Advanced Practice Registered Nurse; and

9. a. Establish a Formulary Advisory Council that shall develop and submit to the Board recommendations for an exclusionary formulary that shall list drugs or categories of drugs that shall not be prescribed by Advanced Practice Registered Nurse recognized to prescribe by the Oklahoma Board of Nursing. The Formulary Advisory Council shall also develop and submit to the Board recommendations for practice-specific prescriptive standards for each category of Advanced Practice Registered Nurse recognized to prescribe by the Oklahoma Board of Nursing pursuant to the provisions of the Oklahoma Nursing Practice Act. The Board shall either accept or reject the recommendations made by the Council. No amendments to the recommended exclusionary formulary may be made by the Board without the approval of the Formulary Advisory Council.

b. The Formulary Advisory Council shall be composed of twelve (12) members as follows:

(1) four members, to include a pediatrician, an obstetrician-gynecological physician, a general internist, and a family practice physician; provided that three of such members shall be appointed by the Oklahoma State Medical

Association, and one shall be appointed by the Oklahoma Osteopathic Association,

(2) four members who are registered pharmacists, appointed by the Oklahoma Pharmaceutical Association, and

(3) four members, one of whom shall be a Certified Nurse Practitioner, one of whom shall be a Clinical Nurse Specialist, one of whom shall be a Certified Nurse-Midwife, and one of whom shall be a current member of the Oklahoma Board of Nursing, all of whom shall be appointed by the Oklahoma Board of Nursing.

- c. All professional members of the Formulary Advisory Council shall be in active clinical practice, at least fifty percent (50%) of the time, within their defined area of specialty. The members of the Formulary Advisory Council shall serve at the pleasure of the appointing authority for a term of three (3) years. The terms of the members shall be staggered. Members of the Council may serve beyond the expiration of their term of office until a successor is appointed by the original appointing authority. A vacancy on the Council shall be filled for the balance of the unexpired term by the original appointing authority.
- d. Members of the Council shall elect a chair and a vice-chair from among the membership of the Council. For the transaction of business, at least seven members, with a minimum of two members present from each of the identified categories of physicians, pharmacists and advanced practice registered nurses, shall constitute a quorum. The Council shall recommend and the Board shall approve and implement an initial exclusionary formulary on or before January 1, 1997. The Council and the Board shall annually review the approved exclusionary formulary and shall make any necessary revisions utilizing the same procedures used to develop the initial exclusionary formulary.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 567.8, as last amended by Section 1, Chapter 72, O.S.L. 2018 (59 O.S. Supp. 2018, 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. Information obtained during an investigation into possible violations of the Oklahoma Nursing Practice Act shall be kept confidential, but may be introduced by the state in administrative proceedings before the Board, whereupon the information admitted becomes a public record. Public records maintained by the agency are administrative records, not public civil or criminal records.

Confidential investigative records shall not be subject to discovery or subpoena in any civil or criminal proceeding, except that the Board may give such information to law enforcement and

other state agencies as necessary and appropriate in the discharge of the duties of that agency and only under circumstances that ensure against unauthorized access to the information.

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~~ the Oklahoma Nursing Practice 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~~ the Oklahoma Nursing Practice 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 3. This act shall become effective November 1, 2019.

Passed the Senate the 11th day of March, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2019.

Presiding Officer of the House
of Representatives

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: _____