

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 876 By: McCortney of the Senate
3 and
4 Caldwell (Chad) of the
5 House

6
7 [State Board of Medical Licensure and Supervision -
8 codification - effective date]
9

10 AMENDMENT NO. 1. Delete the stricken title, enacting clause and
11 entire bill and replace with:
12

13 "An Act relating to the State Board of Medical
14 Licensure and Supervision; amending 59 O.S. 2011,
15 Section 487, which relates to secretary; authorizing
16 Board to hire physician as Medical Advisor; amending
17 59 O.S. 2011, Section 488, which relates to meetings
18 of Board; modifying terminology; making language
19 gender-neutral; making certain meetings not
20 required; requiring certain notice; providing
21 certain construction; amending 59 O.S. 2011, Section
22 493.1, as amended by Section 2, Chapter 280, O.S.L.
23 2013 (59 O.S. Supp. 2018, Section 493.1), which
24 relates to applicant documentation and
qualifications; modifying required documentation;
amending 59 O.S. 2011, Section 495a.1, as amended by
Section 1, Chapter 175, O.S.L. 2018 (59 O.S. Supp.
2018, Section 495a.1), which relates to license
registration; directing Board to promulgate certain
rules; setting certain fine; amending 59 O.S. 2011,
Section 503, as amended by Section 1, Chapter 176,
O.S.L. 2014 (59 O.S. Supp. 2018, Section 503), which
relates to sanctions for unprofessional conduct;
modifying procedure pursuant to sanctions; amending
59 O.S. 2011, Section 503.1, which relates to

1 emergency suspension of licensure; modifying
2 conditions under which Board may suspend license;
3 authorizing promulgation of rules; directing
4 contents of rules; amending 59 O.S. 2011, Section
5 508, which relates to revocation of licensure;
6 modifying conditions under which Board may issue
7 certain fine and require applicant to take certain
8 action; amending 59 O.S. 2011, Section 509, as
9 amended by Section 2, Chapter 175, O.S.L. 2018 (59
10 O.S. Supp. 2018, Section 509), which relates to
11 unprofessional conduct; modifying certain
12 definition; clarifying time period; amending 59 O.S.
13 2011, Section 509.1, which relates to disciplinary
14 actions; providing that investigative files shall
15 remain confidential; amending 59 O.S. 2011, Section
16 512, as amended by Section 3, Chapter 176, O.S.L.
17 2014 (59 O.S. Supp. 2018, Section 512), which
18 relates to salary of secretary; requiring certain
19 investigators to be certified peace officers;
20 providing statewide jurisdiction; requiring
21 investigators to perform certain duties; requiring
22 licensees to cooperate with investigators;
23 broadening services the Board may contract to
24 perform; amending 59 O.S. 2011, Section 513, which
relates to quasi-judicial powers of the Board;
modifying conditions under which the Board shall
revoke a license; amending 59 O.S. 2011, Section
518.1, which relates to the Allied Professional Peer
Assistance Program; authorizing program to employ
director and fix salary; authorizing Board to define
duties of director; authorizing program to contract
with outside entities for certain services;
requiring contracts to be ratified by the Board;
updating statutory references; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 487, is
amended to read as follows:

1 Section 487. A. The State Board of Medical Licensure and
2 Supervision may appoint the secretary to serve as Medical Advisor or
3 hire a physician to serve as Medical Advisor to the Board and the
4 Board staff. The Board may hire the secretary as an employee of the
5 Board at such hours of employment and compensation as determined by
6 the Board. The Board may hire a licensed allopathic physician to
7 serve as the ~~secretary-medical~~ secretary or medical advisor, or
8 both, to the Board and its staff. This position shall be in the
9 exempt unclassified service, as provided for in subsection B of
10 Section 840-5.5 of Title 74 of the Oklahoma Statutes. The secretary
11 shall not be a member of the Board and shall not vote on Board
12 actions.

13 B. The secretary of the Board shall preserve a true record of
14 the official proceedings of the meetings of the Board. He or she
15 shall also preserve a record of physicians licensed, applying for
16 such license or applying for reinstatement of such license in this
17 state showing:

- 18 1. Age;
- 19 2. Ethnic origin;
- 20 3. Sex;
- 21 4. Place of practice and residence;
- 22 5. The time spent in premedical and medical study, together
23 with the names of the schools attended, and the date of graduation
24 therefrom, with the degrees granted;

1 6. The grades made in examination for license or grades filed
2 in application therefor; and

3 7. A record of the final disposition of each application for
4 licensure.

5 The secretary of the Board shall, on or before the first day of
6 May in each year, transmit an official copy of ~~said~~ the register for
7 the preceding calendar year, to the Secretary of State for permanent
8 record, a certified copy of which shall be admitted as evidence in
9 all courts of the state.

10 SECTION 2. AMENDATORY 59 O.S. 2011, Section 488, is
11 amended to read as follows:

12 Section 488. A. The State Board of Medical Licensure and
13 Supervision may hold regular meetings at times to be fixed by the
14 president and secretary of the Board in accordance with the
15 provisions of the Oklahoma Open Meeting Act. In addition, the
16 president and secretary may call such special and other meetings in
17 accordance with the provisions of the Oklahoma Open Meeting Act. A
18 majority of the members of the Board shall constitute a quorum for
19 the transaction of business but a less number may adjourn from time
20 to time until a quorum is present.

21 B. No meeting as provided for in subsection A of this section
22 shall be required for the determination of the qualifications of an
23 applicant for a ~~certificate~~ license issued pursuant to the
24 provisions of Section 495 of this title. Each member of the Board

1 authorized to vote on licensure may review the qualifications of the
2 applicant during times other than when a regular or special meeting
3 is held, to determine the sufficiency of ~~said~~ the qualifications.
4 Each member shall notify the secretary of his or her findings, in
5 writing. The provisions of this subsection shall not be construed
6 to prohibit the Board from reviewing the qualifications of an
7 applicant for licensure during any regular or special meeting of the
8 Board.

9 C. No meeting of the Advisory Committee under the jurisdiction
10 of the Board under this title shall be required for the
11 determination of the qualifications of an applicant for a license.
12 Each member of the Advisory Committee authorized to make
13 recommendations on licensure may review the qualifications of the
14 applicant during times other than when a regular or special Advisory
15 Committee meeting is held to determine the sufficiency of the
16 qualifications. Each member of the Advisory Committee shall notify
17 the Board secretary of his or her recommendations, in writing. The
18 provisions of this subsection shall not be construed to prohibit the
19 Advisory Committee from reviewing the qualifications of an applicant
20 for licensure during any regular or special meeting of the Advisory
21 Committee.

22 SECTION 3. AMENDATORY 59 O.S. 2011, Section 493.1, as
23 amended by Section 2, Chapter 280, O.S.L. 2013 (59 O.S. Supp. 2018,
24 Section 493.1), is amended to read as follows:

1 Section 493.1 A. An applicant to practice medicine and surgery
2 in this state shall provide to the State Board of Medical Licensure
3 and Supervision and attest to the following information and
4 documentation in a manner required by the Board:

5 1. The applicant's full name and all aliases or other names
6 ever used, current address, Social Security number and date and
7 place of birth;

8 2. A ~~signed and notarized~~ photograph of the applicant, taken
9 within the previous twelve (12) months;

10 3. ~~Originals of all~~ All documents and credentials required by
11 the Board, or notarized photocopies or other verification acceptable
12 to the Board of such documents and credentials;

13 4. A list of all jurisdictions, United States or foreign, in
14 which the applicant is licensed or has applied for licensure to
15 practice medicine and surgery or is authorized or has applied for
16 authorization to practice medicine and surgery;

17 5. A list of all jurisdictions, United States or foreign, in
18 which the applicant has been denied licensure or authorization to
19 practice medicine and surgery or has voluntarily surrendered a
20 license or an authorization to practice medicine and surgery;

21 6. A list of all sanctions, judgments, awards, settlements, or
22 convictions against the applicant in any jurisdiction, United States
23 or foreign, that would constitute grounds for disciplinary action
24 under this act or the Board's rules;

1 7. A detailed educational history, including places,
2 institutions, dates, and program descriptions, of all his or her
3 education, including all college, preprofessional, professional, and
4 professional graduate education;

5 8. A detailed chronological life history from age eighteen (18)
6 years to the present, including places and dates of residence,
7 employment, and military service (United States or foreign) and all
8 professional degrees or licenses or certificates now or ever held;
9 and

10 9. Any other information or documentation specifically
11 requested by the Board that is related to the applicant's ability to
12 practice medicine and surgery.

13 B. The applicant shall possess a valid degree of Doctor of
14 Medicine from a medical college or school located in the United
15 States, its territories or possessions, or Canada that was approved
16 by the Board or by a private nonprofit accrediting body approved by
17 the Board at the time the degree was conferred. The application
18 shall be considered by the Board based upon the product and process
19 of the medical education and training.

20 C. The applicant shall have satisfactorily completed twelve
21 (12) months of progressive postgraduate medical training approved by
22 the Board or by a private nonprofit accrediting body approved by the
23 Board in an institution in the United States, its territories or
24 possessions, or in programs in Canada, England, Scotland, Ireland,

1 Australia or New Zealand approved by the Board or by a private
2 nonprofit accrediting body approved by the Board.

3 D. The applicant shall submit a history from the Administration
4 of the Medical School from which the applicant graduated of any
5 suspension, probation, or disciplinary action taken against the
6 applicant while a student at that institution.

7 E. The applicant shall have passed medical licensing
8 examination(s) satisfactory to the Board.

9 F. The applicant shall have demonstrated a familiarity with all
10 appropriate statutes and rules and regulations of this state and the
11 federal government relating to the practice of medicine and surgery.

12 G. The applicant shall be physically, mentally, professionally,
13 and morally capable of practicing medicine and surgery in a manner
14 reasonably acceptable to the Board and in accordance with federal
15 law and shall be required to submit to a physical, mental, or
16 professional competency examination or a drug dependency evaluation
17 if deemed necessary by the Board.

18 H. The applicant shall not have committed or been found guilty
19 by a competent authority, United States or foreign, of any conduct
20 that would constitute grounds for disciplinary action under this act
21 or rules of the Board. The Board may modify this restriction for
22 cause.

23 I. Upon request by the Board, the applicant shall make a
24 personal appearance before the Board or a representative thereof for

1 interview, examination, or review of credentials. At the discretion
2 of the Board, the applicant shall be required to present his or her
3 original medical education credentials for inspection during the
4 personal appearance.

5 J. The applicant shall be held responsible for verifying to the
6 satisfaction of the Board the identity of the applicant and the
7 validity of all credentials required for his or her medical
8 licensure. The Board may review and verify medical credentials and
9 screen applicant records through recognized national physician
10 information services.

11 K. The applicant shall have paid all fees and completed and
12 attested to the accuracy of all application and information forms
13 required by the Board.

14 L. Grounds for the denial of a license shall include:

- 15 1. Use of false or fraudulent information by an applicant;
- 16 2. Suspension or revocation of a license in another state
17 unless the license has been reinstated in that state;
- 18 3. Refusal of licensure in another state other than for
19 examination failure; and
- 20 4. Multiple examination failures.

21 M. The Board shall not deny a license to a person otherwise
22 qualified to practice allopathic medicine within the meaning of this
23 act solely because the person's practice or a therapy is
24 experimental or nontraditional.

1 SECTION 4. AMENDATORY 59 O.S. 2011, Section 495a.1, as
2 amended by Section 1, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018,
3 Section 495a.1) is amended to read as follows:

4 Section 495a.1 A. At regular intervals set by the State Board
5 of Medical Licensure and Supervision, no less than one time per
6 annum, each licensee licensed by ~~this act~~ the Oklahoma Allopathic
7 Medical and Surgical Licensure and Supervision Act shall demonstrate
8 to the Board the licensee's continuing qualification to practice
9 medicine and surgery. The licensee shall apply for license
10 reregistration on a form or forms provided by the Board, which shall
11 be designed to require the licensee to update or add to the
12 information in the Board's file relating to the licensee and his or
13 her professional activity. It shall also require the licensee to
14 report to the Board the following information:

15 1. Any action taken against the licensee for acts or conduct
16 similar to acts or conduct described in ~~this act~~ the Oklahoma
17 Allopathic Medical and Surgical Licensure and Supervision Act as
18 grounds for disciplinary action by:

- 19 a. any jurisdiction or authority (United States or
20 foreign) that licenses or authorizes the practice of
21 medicine and surgery,
- 22 b. any peer review body,
- 23 c. any health care institution,
- 24 d. any professional medical society or association,

1 e. any law enforcement agency,

2 f. any court, or

3 g. any governmental agency;

4 2. Any adverse judgment, settlement, or award against the
5 licensee arising from a professional liability claim;

6 3. The licensee's voluntary surrender of or voluntary
7 limitation on any license or authorization to practice medicine and
8 surgery in any jurisdiction, including military, public health and
9 foreign;

10 4. Any denial to the licensee of a license or authorization to
11 practice medicine and surgery by any jurisdiction, including
12 military, public health or foreign;

13 5. The licensee's voluntary resignation from the medical staff
14 of any health care institution or voluntary limitation of the
15 licensee's staff privileges at such an institution if that action
16 occurred while the licensee was under formal or informal
17 investigation by the institution or a committee thereof for any
18 reason related to alleged medical incompetence, unprofessional
19 conduct, or mental or physical impairment;

20 6. The licensee's voluntary resignation or withdrawal from a
21 national, state, or county medical society, association, or
22 organization if that action occurred while the licensee was under
23 formal or informal investigation or review by that body for any
24

1 reason related to possible medical incompetence, unprofessional or
2 unethical conduct, or mental or physical impairment;

3 7. Whether the licensee has abused or has been addicted to or
4 treated for addiction to alcohol or any chemical substance during
5 the previous registration period, unless such person is in a
6 rehabilitation program approved by the Board;

7 8. Whether the licensee has had any physical injury or disease
8 or mental illness during the previous registration period that
9 affected or interrupted his or her practice of medicine and surgery;
10 and

11 9. The licensee's completion of continuing medical education or
12 other forms of professional maintenance or evaluation, including
13 specialty board certification or recertification, during the
14 previous registration period.

15 B. The Board may require continuing medical education for
16 license reregistration and require documentation of that education.
17 The Board shall promulgate rules on the specific requirements of the
18 amount of continuing medical education needed for reregistration.
19 Failure to meet the requirements in the allotted time may result in
20 the licensee being required to pay a nondisciplinary fine by the
21 Board secretary of up to but not more than One Thousand Dollars
22 (\$1,000.00).

23 C. The Board shall require that the licensee receive not less
24 than one (1) hour of education in pain management or one (1) hour of

1 education in opioid use or addiction each year preceding an
2 application for renewal of a license, unless the licensee has
3 demonstrated to the satisfaction of the Board that the licensee does
4 not currently hold a valid federal Drug Enforcement Administration
5 registration number.

6 D. The licensee shall sign and attest to the veracity of the
7 application form for license reregistration. Failure to report
8 fully and correctly shall be grounds for disciplinary action by the
9 Board.

10 E. The Board shall establish a system for reviewing
11 reregistration forms. The Board may initiate investigations and
12 disciplinary proceedings based on information submitted by licensees
13 for license reregistration.

14 F. Upon a finding by the Board that the licensee is fit to
15 continue to practice medicine and surgery in this state, the Board
16 shall issue to the licensee a license to practice medicine and
17 surgery during the next registration period.

18 SECTION 5. AMENDATORY 59 O.S. 2011, Section 503, as
19 amended by Section 1, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2018,
20 Section 503), is amended to read as follows:

21 Section 503. The State Board of Medical Licensure and
22 Supervision may suspend, revoke or order any other appropriate
23 sanctions against the license of any physician or surgeon holding a
24 license to practice in this state for unprofessional conduct, but no

1 such suspension, revocation or other penalty shall be made until the
2 licensee is cited to appear for hearing. No such citation shall be
3 issued except upon sworn complaint filed with the secretary of the
4 Board charging the licensee with having been guilty of
5 unprofessional conduct and setting forth the particular act or acts
6 alleged to constitute unprofessional conduct. In the event it comes
7 to the attention of the Board that a violation of the rules of
8 professional conduct may have occurred, even though a formal
9 complaint or charge may not have been filed, the Board staff may
10 conduct an investigation of the possible violation, and may upon its
11 own motion institute a formal complaint. In the course of the
12 investigation persons appearing before the Board may be required to
13 testify under oath. Upon the filing of a complaint, either by an
14 individual or the Board staff as provided herein, the citation must
15 forthwith be issued by the secretary of the Board over the signature
16 of the secretary and seal of the Board, setting forth the complaint
17 of unprofessional conduct, and giving due notice of the time and
18 place of the hearing by the Board. ~~The citation shall be made~~
19 ~~returnable at the next regular meeting of the Board occurring at~~
20 ~~least thirty (30) days after the service of the citation. In any~~
21 case in which a physician disputes allegations made in a complaint,
22 the matter shall be set and heard by the Board at the next regular
23 meeting of the Board occurring at least thirty (30) calendar days
24 after the day of service of the citation, exclusive of the day of

1 service, but will be heard not later than the next regular meeting
2 of the Board occurring after ninety (90) calendar days after service
3 of the citation, exclusive of the day of service. No continuance
4 may be granted by the Board on its own motion or at the request of
5 the defendant or his or her counsel or at the request of the
6 attorney for the state, unless the record of the case, either orally
7 or in writing, sets forth a finding that the ends of justice served
8 by the granting of such continuance outweigh the best interest of
9 the public and the defendant in a speedy hearing. The defendant
10 shall file a written answer under oath with the secretary of the
11 Board within twenty (20) calendar days after the service of the
12 citation, exclusive of the day of service. The secretary of the
13 Board may extend the time of answer upon satisfactory showing that
14 the defendant is for reasonable cause unable to answer within the
15 twenty (20) calendar days exclusive of the day of service, but in no
16 case shall the time be extended beyond the date of the next regular
17 meeting of the Board, unless a continuance is granted by the Board.

18 SECTION 6. AMENDATORY 59 O.S. 2011, Section 503.1, is
19 amended to read as follows:

20 Section 503.1 The Secretary of the State Board of Medical
21 Licensure and Supervision, upon concurrence of the President of the
22 Board that an emergency exists for which the immediate suspension of
23 a license is imperative for the public health, safety and welfare,
24 may conduct a hearing as contemplated by Section 314 of Title 75 of

1 the Oklahoma Statutes ~~to~~ and may, upon probable cause, suspend
2 temporarily the license of any person under the jurisdiction of the
3 Board.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 503.2 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The State Board of Medical Licensure and Supervision may
8 promulgate rules to create administrative remedies for licensee
9 violations of statutory or regulatory prescribed unprofessional
10 conduct.

11 B. The Board is authorized to prescribe by rule administrative
12 remedies, disciplinary actions and administrative procedures to
13 provide remedies and disciplinary actions for licensee violations of
14 statutory or regulatory prescribed unprofessional conduct, to
15 include fines up to the limits otherwise prescribed by statute or
16 rule.

17 C. Any such administrative action rules promulgated by the
18 Board shall provide procedure:

19 1. For the licensee to contest or dispute any administrative
20 action;

21 2. For procedures for resolution of any such contest or
22 dispute; and

23 3. For appropriate protection of private information consistent
24 with state and federal law.

1 SECTION 8. AMENDATORY 59 O.S. 2011, Section 508, is
2 amended to read as follows:

3 Section 508. A. Whenever any license has been procured or
4 obtained by fraud or misrepresentation on the licensure application,
5 or was issued by mistake; or if the diploma of graduation in
6 medicine and surgery or any other credentials required as necessary
7 to the admission to the examination for license were obtained by
8 fraud or misrepresentation on the licensure application, or were
9 issued by mistake; or if the reciprocity endorsement from another
10 state, upon which a license has been issued in this state, was
11 procured by fraud or misrepresentation, or was issued by mistake, it
12 shall be the duty of the State Board of Medical Licensure and
13 Supervision to take appropriate disciplinary action in the same
14 manner as is provided by the Oklahoma Allopathic Medical and
15 Surgical Licensure and Supervision Act for the disciplining of
16 unprofessional conduct or in cases of unintentional
17 misrepresentation of information on the licensure application, the
18 State Board of Medical Licensure and Supervision shall delegate to
19 the Board secretary the ability to issue a nondisciplinary
20 administrative fine of up to but not more than One Thousand Dollars
21 (\$1,000.00) per licensure applicant or to require a continuing
22 medical education course in ethics, or to take both actions, to
23 impress upon the applicant the seriousness of completing the
24 application truthfully.

1 B. Use of fraudulent information to obtain a license shall be a
2 misdemeanor offense, punishable, upon conviction, by the imposition
3 of a fine of not less than One Thousand Dollars (\$1,000.00), or by
4 imprisonment in the county jail for not more than one (1) year, or
5 by both such fine and imprisonment.

6 SECTION 9. AMENDATORY 59 O.S. 2011, Section 509, as
7 amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018,
8 Section 509), is amended to read as follows:

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

- 12 1. Procuring, aiding or abetting a criminal operation;
- 13 2. The obtaining of any fee or offering to accept any fee,
14 present or other form of remuneration whatsoever, on the assurance
15 or promise that a manifestly incurable disease can or will be cured;
- 16 3. Willfully betraying a professional secret to the detriment
17 of the patient;
- 18 4. Habitual intemperance or the habitual use of habit-forming
19 drugs;
- 20 5. Conviction or confession of, or plea of guilty, nolo
21 contendere, no contest or Alford plea to, a felony or ~~of~~ any offense
22 involving moral turpitude;

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

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

7 a. the antinarcotic or prohibition laws and regulations
8 of the federal government,

9 b. the laws of this state, ~~or~~

10 c. State Board of Health rules, or

11 d. a determination by a judge or jury;

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

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

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

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

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

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

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

15 15. The inability to practice medicine with reasonable skill
16 and safety to patients by reason of age, illness, drunkenness,
17 excessive use of drugs, narcotics, chemicals, or any other type of
18 material or as a result of any mental or physical condition. In
19 enforcing this ~~subsection~~ section the State Board of Medical
20 Licensure and Supervision may, upon probable cause, request a
21 physician to submit to a mental or physical examination by
22 physicians designated by it. If the physician refuses to submit to
23 the examination, the Board shall issue an order requiring the
24 physician to show cause why the physician will not submit to the

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

- 13 16. a. Prescribing, dispensing or administering of controlled
14 substances or narcotic drugs in excess of the amount
15 considered good medical practice,
16 b. prescribing, dispensing or administering controlled
17 substances or narcotic drugs without medical need in
18 accordance with pertinent licensing board standards,
19 or
20 c. prescribing, dispensing or administering opioid drugs
21 in excess of the maximum dosage authorized under
22 Section ~~5 of this act~~ 2-309I of Title 63 of the
23 Oklahoma Statutes;

24

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.

18 SECTION 10. AMENDATORY 59 O.S. 2011, Section 509.1, is
19 amended to read as follows:

20 Section 509.1 A. RANGE OF ACTIONS: The State Board of Medical
21 Licensure and Supervision may impose disciplinary actions in
22 accordance with the severity of violation of the Oklahoma Allopathic
23 Medical and Surgical Licensure and Supervision Act. Disciplinary
24 actions may include, but are not limited to the following:

- 1 1. Revocation of the medical license with or without the right
2 to reapply;
- 3 2. Suspension of the medical license;
- 4 3. Probation;
- 5 4. Stipulations, limitations, restrictions, and conditions
6 relating to practice;
- 7 5. Censure, including specific redress, if appropriate;
- 8 6. Reprimand;
- 9 7. A period of free public or charity service;
- 10 8. Satisfactory completion of an educational, training, and/or
11 treatment program or programs; and
- 12 9. Administrative fines of up to Five Thousand Dollars
13 (\$5,000.00) per violation.

14 Provided, as a condition of disciplinary action sanctions, the Board
15 may impose as a condition of any disciplinary action, the payment of
16 costs expended by the Board for any legal fees and costs and
17 probation and monitoring fees including, but not limited to, staff
18 time, salary and travel expense, witness fees and attorney fees.
19 The Board may take such actions singly or in combination as the
20 nature of the violation requires.

21 B. LETTER OF CONCERN: The Board may authorize the secretary to
22 issue a confidential letter of concern to a licensee when evidence
23 does not warrant formal proceedings, but the secretary has noted
24 indications of possible errant conduct that could lead to serious

1 consequences and formal action. The letter of concern may contain,
2 at the secretary's discretion, clarifying information from the
3 licensee.

4 C. EXAMINATION/EVALUATION: The Board may, upon reasonable
5 cause, require professional competency, physical, mental, or
6 chemical dependency examinations of any licensee, including
7 withdrawal and laboratory examination of body fluids.

8 D. DISCIPLINARY ACTION AGAINST LICENSEES:

9 1. The Board shall promulgate rules describing acts of
10 unprofessional or unethical conduct by physicians pursuant to the
11 Oklahoma Allopathic Medical and Surgical Licensure and Supervision
12 Act; and

13 2. Grounds for Action: The Board may take disciplinary action
14 for unprofessional or unethical conduct as deemed appropriate based
15 upon the merits of each case and as set out by rule. The Board
16 shall not revoke the license of a person otherwise qualified to
17 practice allopathic medicine within the meaning of the Oklahoma
18 Allopathic Medical and Surgical Licensure and Supervision Act solely
19 because the person's practice or a therapy is experimental or
20 nontraditional.

21 Reports of all disciplinary action provided for in this section
22 will be available to the public upon request. Investigative files
23 shall remain confidential.

24 E. SURRENDER IN LIEU OF PROSECUTION:

1 1. The Board may accept a surrender of license from a licensee
2 who has engaged in unprofessional conduct in lieu of Board staff
3 prosecuting a pending disciplinary action or filing formal
4 disciplinary proceedings only as provided in this section. To
5 effect such a surrender, the licensee must submit a sworn statement
6 to the Board:

7 a. expressing the licensee's desire to surrender the
8 license,

9 b. acknowledging that the surrender is freely and
10 voluntarily made, that the licensee has not been
11 subjected to coercion or duress, and that the licensee
12 is fully aware of the consequences of the license
13 surrender,

14 c. stating that the licensee is the subject of an
15 investigation or proceeding by the Board or a law
16 enforcement or other regulatory agency involving
17 allegations which, if proven, would constitute grounds
18 for disciplinary action by the Board, and

19 d. specifically admitting to and describing the
20 misconduct.

21 2. The sworn written statement must be submitted with the
22 licensee's wallet card and wall certificate. The Secretary or
23 Executive Director of the Board may accept the sworn statement,
24 wallet card and wall certificate from a licensee pending formal

1 acceptance by the Board. The issuance of a complaint and citation
2 by the Board shall not be necessary for the Board to accept a
3 surrender under this subsection. A surrender under this subsection
4 shall be considered disciplinary action by the Board in all cases,
5 even in cases where surrender occurs prior to the issuance of a
6 formal complaint and citation, and shall be reported as disciplinary
7 action by the Board to the public and any other entity to whom the
8 Board regularly reports disciplinary actions.

9 3. As a condition to acceptance of the surrender, the Board may
10 require the licensee to pay the costs expended by the Board for any
11 legal fees and costs and any investigation, probation and monitoring
12 fees including, but not limited to, staff time, salary and travel
13 expense, witness fees and attorney fees.

14 4. The licensee whose surrender in lieu of prosecution is
15 accepted by the Board shall be ineligible to reapply for
16 reinstatement of his or her license for at least one (1) year from
17 the date of the accepted surrender.

18 F. ALL LICENSED PROFESSIONALS: All disciplinary actions
19 defined in this section are applicable to any and all professional
20 licensees under the legislative jurisdiction of the State Board of
21 Medical Licensure and Supervision.

22 SECTION 11. AMENDATORY 59 O.S. 2011, Section 512, as
23 amended by Section 3, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2018,
24 Section 512), is amended to read as follows:

1 Section 512. A. The secretary of the State Board of Medical
2 Licensure and Supervision shall be paid an annual salary in an
3 amount fixed by the Board. The Board shall have the authority to
4 expend such funds as are necessary in carrying out the duties of the
5 Board and shall have the authority to hire all necessary personnel,
6 at salaries to be fixed by the Board, as the Board shall deem
7 necessary. The Board shall have the authority to hire attorneys to
8 represent the Board in all legal matters and to assist authorized
9 state and county officers in prosecuting or restraining violations
10 of Section 481 et seq. of this title, and to fix the salaries or per
11 diem of ~~said~~ the attorneys.

12 B. The Board shall have the authority to hire one or more
13 investigators as may be necessary to carry out the provisions of
14 ~~this act~~ the Oklahoma Allopathic Medical and Surgical Licensure and
15 Supervision Act at an annual salary to be fixed by the Board. Such
16 investigators may be commissioned peace officers of this state. In
17 addition such investigators shall have the authority and duty to
18 investigate and inspect the records of all persons in order to
19 determine whether or not a disciplinary action for unprofessional
20 misconduct is warranted or whether the narcotic laws or the
21 dangerous drug laws have been complied with.

22 C. 1. For purposes of this section, investigators shall be
23 peace officers certified by the Council on Law Enforcement Education
24 and Training and shall have statewide jurisdiction to perform the

1 duties authorized by this section. In addition, the investigators
2 shall have all the powers now or hereafter vested by law in peace
3 officers.

4 2. Investigators for the Oklahoma State Board of Medical
5 Licensure and Supervision shall perform such services as are
6 necessary in the investigation of criminal activity or preparation
7 of administrative actions.

8 3. Any licensee or applicant for license subject to the
9 provisions of the Oklahoma Allopathic Medical and Surgical Licensure
10 and Supervision Act shall be deemed to have given consent to any
11 duly authorized investigator of the Board to access, enter or
12 inspect the records, either on-site or at the Board office, or
13 facilities of such licensee or applicant subject to the Oklahoma
14 Allopathic Medical and Surgical Licensure and Supervision Act.
15 Refusal to allow such access, entry or inspection may constitute
16 grounds for the denial, nonrenewal, suspension or revocation of a
17 license. Upon refusal of such access, entry or inspection, pursuant
18 to this section, the Board or a duly authorized representative may
19 make application for and obtain a search warrant from the district
20 court where the facility or records are located to allow such
21 access, entry or inspection.

22 D. 1. The Board is specifically authorized to contract with
23 state agencies or other bodies to perform investigative services or
24 other administrative services at a rate set by the Board.

1 2. The Board is authorized to pay the travel expenses of Board
2 employees and members in accordance with the State Travel
3 Reimbursement Act.

4 3. The expenditures authorized herein to include capital
5 purchases shall not be a charge against the state, but the same
6 shall be paid solely from the Board's depository fund.

7 SECTION 12. AMENDATORY 59 O.S. 2011, Section 513, is
8 amended to read as follows:

9 Section 513. A. 1. The State Board of Medical Licensure and
10 Supervision is hereby given quasi-judicial powers while sitting as a
11 Board for the purpose of revoking, suspending or imposing other
12 disciplinary actions upon the license of physicians or surgeons of
13 this state, and appeals from its decisions shall be taken to the
14 Supreme Court of this state within thirty (30) days of the date that
15 a copy of the decision is mailed to the appellant, as shown by the
16 certificate of mailing attached to the decision.

17 2. The license of any physician or surgeon who has been
18 convicted of any felony in or without the State of Oklahoma, and
19 whether in a state or federal court, may be suspended by the Board
20 upon the submission thereto of a certified copy of the judgment and
21 sentence of the trial court and the certificate of the clerk of the
22 court of the conviction.

23 3. Upon proof of a ~~final~~ felony conviction by the courts ~~and~~
24 ~~after exhaustion of the appellate process~~, the Board shall revoke

1 the physician's license. If the felony conviction is overturned on
2 appeal and no other appeals are sought, the Board shall restore the
3 license of the physician. ~~Suspension or revocation of the license~~
4 ~~of any person convicted of a felony on any other grounds than that~~
5 ~~of moral turpitude or the violation of the federal or state narcotic~~
6 ~~laws, shall be on the merits of the particular case, but the court~~
7 Court records in the trial of such case when of such a conviction
8 ~~has been had~~ shall be prima facie evidence of the conviction.

9 4. The Board shall also revoke and cancel the license of any
10 physician or surgeon who has been charged in a court of record of
11 this or other states of the United States or in the federal court
12 with the commission of a felony and who is a fugitive from justice,
13 upon the submission of a certified copy of the charge together with
14 a certificate from the clerk of the court that after the commitment
15 of the crime the physician or surgeon fled from the jurisdiction of
16 the court and is a fugitive from justice.

17 B. To the extent necessary to allow the Board the power to
18 enforce disciplinary actions imposed by the Board, in the exercise
19 of its authority, the Board may punish willful violations of its
20 orders and impose additional penalties as allowed by Section 509.1
21 of this title.

22 SECTION 13. AMENDATORY 59 O.S. 2011, Section 518.1, is
23 amended to read as follows:

24

1 Section 518.1 A. There is hereby established the Allied
2 Professional Peer Assistance Program to rehabilitate allied medical
3 professionals whose competency may be compromised because of the
4 abuse of drugs or alcohol, so that such allied medical professionals
5 can be treated and can return to or continue the practice of allied
6 medical practice in a manner which will benefit the public. The
7 program shall be under the supervision and control of the State
8 Board of Medical Licensure and Supervision.

9 B. The Board may appoint one or more peer assistance evaluation
10 advisory committees, hereinafter called the "allied peer assistance
11 committees". Each of these committees shall be composed of members,
12 the majority of which shall be licensed allied medical professionals
13 with expertise in chemical dependency. The allied peer assistance
14 committees shall function under the authority of the State Board of
15 Medical Licensure and Supervision in accordance with the rules of
16 the Board. The program may be one hundred percent (100%) outsourced
17 to professional groups specialized in this arena. The committee
18 members shall serve without pay, but may be reimbursed for the
19 expenses incurred in the discharge of their official duties in
20 accordance with the State Travel Reimbursement Act.

21 C. The Board may appoint and employ a qualified person or
22 persons to serve as program coordinators and shall fix such person's
23 compensation. The program may employ a director for purposes of
24 ongoing nonclerical administrative duties and shall fix the

1 director's compensation. The Board shall define the duties of the
2 program coordinators and director who shall report directly to the
3 Board.

4 D. The Board is authorized to adopt and revise rules, not
5 inconsistent with the Oklahoma Allopathic Medical and Surgical
6 Licensure and Supervision Act, as may be necessary to enable it to
7 carry into effect the provisions of this section.

8 E. A portion of licensing fees for each allied profession, not
9 to exceed Ten Dollars (\$10.00), may be used to implement and
10 maintain the Allied Professional Peer Assistance Program.

11 F. All monies paid pursuant to subsection E of this section
12 shall be deposited in an agency special account revolving fund under
13 the State Board of Medical Licensure and Supervision, and shall be
14 used for the general operating expenses of the Allied Professional
15 Peer Assistance Program, including payment of personal services.

16 G. Records and management information system of the
17 professionals enrolled in the Allied Professional Peer Assistance
18 Program and reports shall be maintained in the program office in a
19 place separate and apart from the records of the Board. The records
20 shall be made public only by subpoena and court order; provided
21 however, confidential treatment shall be cancelled upon default by
22 the professional in complying with the requirements of the program.

23 H. Any person making a report to the Board or to an allied peer
24 assistance committee regarding a professional suspected of

1 practicing allied medical practice while habitually intemperate or
2 addicted to the use of habit-forming drugs, or a professional's
3 progress or lack of progress in rehabilitation, shall be immune from
4 any civil or criminal action resulting from such reports, provided
5 such reports are made in good faith.

6 I. A professional's participation in the Allied Professional
7 Peer Assistance Program in no way precludes additional proceedings
8 by the Board for acts or omissions of acts not specifically related
9 to the circumstances resulting in the professional's entry into the
10 program. However, in the event the professional defaults from the
11 program, the Board may discipline the professional for those acts
12 which led to the professional entering the program.

13 J. The Executive Director of the Board shall suspend the
14 license immediately upon notification that the licensee has
15 defaulted from the Allied Professional Peer Assistance Program, and
16 shall assign a hearing date for the matter to be presented to the
17 Board.

18 K. All treatment information, whether or not recorded, and all
19 communications between a professional and therapist are both
20 privileged and confidential. In addition, the identity of all
21 persons who have received or are receiving treatment services shall
22 be considered confidential and privileged.

23 L. As used in this section, unless the context otherwise
24 requires:

1 1. "Board" means the State Board of Medical Licensure and
2 Supervision; and

3 2. "Allied peer assistance committee" means the peer assistance
4 evaluation advisory committee created in this section, which is
5 appointed by the State Board of Medical Licensure and Supervision to
6 carry out specified duties.

7 M. The Allied Professional Peer Assistance Program may contract
8 with outside entities for services that are not available to it or
9 can be obtained for a lesser cost through such a contract. The
10 contract shall be ratified by the Board.

11 SECTION 14. This act shall become effective November 1, 2019."

12 Passed the House of Representatives the 24th day of April, 2019.

13

14

15 _____
16 Presiding Officer of the House of
Representatives

17 Passed the Senate the 24th day of April, 2019.

18

19

20 _____
Presiding Officer of the Senate

21

22

23

24

1 ENGROSSED SENATE
2 BILL NO. 876

By: McCortney of the Senate

3 and

4 Caldwell (Chad) of the
5 House

6 [State Board of Medical Licensure and Supervision -
7 codification - effective date]
8
9

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

11 SECTION 15. AMENDATORY 59 O.S. 2011, Section 487, is
12 amended to read as follows:

13 Section 487. A. The State Board of Medical Licensure and
14 Supervision may appoint the secretary to serve as Medical Advisor or
15 hire a physician as Medical Advisor to the Board and the Board
16 staff. The Board may hire the secretary as an employee of the Board
17 at such hours of employment and compensation as determined by the
18 Board. The Board may hire a licensed allopathic physician to serve
19 as the secretary- or medical advisor, or both, to the Board and its
20 staff. This position shall be in the exempt unclassified service,
21 as provided for in subsection B of Section 840-5.5 of Title 74 of
22 the Oklahoma Statutes. The secretary shall not be a member of the
23 Board and shall not vote on Board actions.
24

1 B. The secretary of the Board shall preserve a true record of
2 the official proceedings of the meetings of the Board. He or she
3 shall also preserve a record of physicians licensed, applying for
4 such license or applying for reinstatement of such license in this
5 state showing:

6 1. Age;

7 2. Ethnic origin;

8 3. Sex;

9 4. Place of practice and residence;

10 5. The time spent in premedical and medical study, together
11 with the names of the schools attended, and the date of graduation
12 therefrom, with the degrees granted;

13 6. The grades made in examination for license or grades filed
14 in application therefor; and

15 7. A record of the final disposition of each application for
16 licensure.

17 The secretary of the Board shall, on or before the first day of
18 May in each year, transmit an official copy of ~~said~~ the register for
19 the preceding calendar year, to the Secretary of State for permanent
20 record, a certified copy of which shall be admitted as evidence in
21 all courts of the state.

22 SECTION 16. AMENDATORY 59 O.S. 2011, Section 488, is
23 amended to read as follows:

1 Section 488. A. The Board may hold regular meetings at times
2 to be fixed by the president and secretary of the Board in
3 accordance with the provisions of the Oklahoma Open Meeting Act. In
4 addition, the president and secretary may call such special and
5 other meetings in accordance with the provisions of the Oklahoma
6 Open Meeting Act. A majority of the members of the Board shall
7 constitute a quorum for the transaction of business but a less
8 number may adjourn from time to time until a quorum is present.

9 B. No meeting as provided for in subsection A of this section
10 shall be required for the determination of the qualifications of an
11 applicant for a ~~certificate~~ license issued pursuant to the
12 provisions of Section 495 of this title. Each member of the Board
13 authorized to vote on licensure may review the qualifications of the
14 applicant during times other than when a regular or special meeting
15 is held, to determine the sufficiency of ~~said~~ the qualifications.
16 Each member shall notify the secretary of his or her findings, in
17 writing. The provisions of this subsection shall not be construed
18 to prohibit the Board from reviewing the qualifications of an
19 applicant for licensure during any regular or special meeting of the
20 Board.

21 C. No meeting of an Advisory Committee under the jurisdiction
22 of the Board under this title shall be required for the
23 determination of the qualifications of an applicant for a license.
24 Each member of the Advisory Committee authorized to make

1 recommendations on licensure may review the qualifications of the
2 applicant during times other than when a regular or special Advisory
3 Committee meeting is held, to determine the sufficiency of the
4 qualifications. Each member of the Advisory Committee shall notify
5 the Board Secretary of his or her recommendations, in writing. The
6 provisions of this subsection shall not be construed to prohibit the
7 Advisory Committee from reviewing the qualifications of an applicant
8 for licensure during any regular or special meeting of the Advisory
9 Committee.

10 SECTION 17. AMENDATORY 59 O.S. 2011, Section 495a.1, as
11 amended by Section 1, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018,
12 Section 495a.1) is amended to read as follows:

13 Section 495a.1. A. At regular intervals set by the Board, no
14 less than one time per annum, each licensee licensed by ~~this act~~ the
15 Oklahoma Allopathic Medical and Surgical Licensure and Supervision
16 Act shall demonstrate to the Board the licensee's continuing
17 qualification to practice medicine and surgery. The licensee shall
18 apply for license reregistration on a form or forms provided by the
19 Board, which shall be designed to require the licensee to update or
20 add to the information in the Board's file relating to the licensee
21 and his or her professional activity. It shall also require the
22 licensee to report to the Board the following information:

23 1. Any action taken against the licensee for acts or conduct
24 similar to acts or conduct described in ~~this act~~ the Oklahoma

1 Allopathic Medical and Surgical Licensure and Supervision Act as
2 grounds for disciplinary action by:

- 3 a. any jurisdiction or authority (United States or
4 foreign) that licenses or authorizes the practice of
5 medicine and surgery,
- 6 b. any peer review body,
- 7 c. any health care institution,
- 8 d. any professional medical society or association,
- 9 e. any law enforcement agency,
- 10 f. any court, or
- 11 g. any governmental agency;

12 2. Any adverse judgment, settlement, or award against the
13 licensee arising from a professional liability claim;

14 3. The licensee's voluntary surrender of or voluntary
15 limitation on any license or authorization to practice medicine and
16 surgery in any jurisdiction, including military, public health and
17 foreign;

18 4. Any denial to the licensee of a license or authorization to
19 practice medicine and surgery by any jurisdiction, including
20 military, public health or foreign;

21 5. The licensee's voluntary resignation from the medical staff
22 of any health care institution or voluntary limitation of the
23 licensee's staff privileges at such an institution if that action
24 occurred while the licensee was under formal or informal

1 investigation by the institution or a committee thereof for any
2 reason related to alleged medical incompetence, unprofessional
3 conduct, or mental or physical impairment;

4 6. The licensee's voluntary resignation or withdrawal from a
5 national, state, or county medical society, association, or
6 organization if that action occurred while the licensee was under
7 formal or informal investigation or review by that body for any
8 reason related to possible medical incompetence, unprofessional or
9 unethical conduct, or mental or physical impairment;

10 7. Whether the licensee has abused or has been addicted to or
11 treated for addiction to alcohol or any chemical substance during
12 the previous registration period, unless such person is in a
13 rehabilitation program approved by the Board;

14 8. Whether the licensee has had any physical injury or disease
15 or mental illness during the previous registration period that
16 affected or interrupted his or her practice of medicine and surgery;
17 and

18 9. The licensee's completion of continuing medical education or
19 other forms of professional maintenance or evaluation, including
20 specialty board certification or recertification, during the
21 previous registration period.

22 B. The Board may require continuing medical education for
23 license reregistration and require documentation of that education.

24 The Board shall promulgate rules on the specific requirements of the

1 amount of continuing medical education needed for reregistration.
2 Failure to meet the requirements in the allotted time may result in
3 the licensee being required to pay a nondisciplinary fine by the
4 Board Secretary of up to but not more than One Thousand Dollars
5 (\$1,000.00).

6 C. The Board shall require that the licensee receive not less
7 than one (1) hour of education in pain management or one (1) hour of
8 education in opioid use or addiction each year preceding an
9 application for renewal of a license, unless the licensee has
10 demonstrated to the satisfaction of the Board that the licensee does
11 not currently hold a valid federal Drug Enforcement Administration
12 registration number.

13 D. The licensee shall sign and attest to the veracity of the
14 application form for license reregistration. Failure to report
15 fully and correctly shall be grounds for disciplinary action by the
16 Board.

17 E. The Board shall establish a system for reviewing
18 reregistration forms. The Board may initiate investigations and
19 disciplinary proceedings based on information submitted by licensees
20 for license reregistration.

21 F. Upon a finding by the Board that the licensee is fit to
22 continue to practice medicine and surgery in this state, the Board
23 shall issue to the licensee a license to practice medicine and
24 surgery during the next registration period.

1 SECTION 18. AMENDATORY 59 O.S. 2011, Section 503, as
2 amended by Section 1, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2018,
3 Section 503), is amended to read as follows:

4 Section 503. The State Board of Medical Licensure and
5 Supervision may suspend, revoke or order any other appropriate
6 sanctions against the license of any physician or surgeon holding a
7 license to practice in this state for unprofessional conduct, but no
8 such suspension, revocation or other penalty shall be made until the
9 licensee is cited to appear for hearing. No such citation shall be
10 issued except upon sworn complaint filed with the secretary of the
11 Board charging the licensee with having been guilty of
12 unprofessional conduct and setting forth the particular act or acts
13 alleged to constitute unprofessional conduct. In the event it comes
14 to the attention of the Board that a violation of the rules of
15 professional conduct may have occurred, even though a formal
16 complaint or charge may not have been filed, the Board staff may
17 conduct an investigation of the possible violation, and may upon its
18 own motion institute a formal complaint. In the course of the
19 investigation persons appearing before the Board may be required to
20 testify under oath. Upon the filing of a complaint, either by an
21 individual or the Board staff as provided herein, the citation must
22 forthwith be issued by the secretary of the Board over the signature
23 of the secretary and seal of the Board, setting forth the complaint
24 of unprofessional conduct, and giving due notice of the time and

1 place of the hearing by the Board. ~~The citation shall be made~~
2 ~~returnable at the next regular meeting of the Board occurring at~~
3 ~~least thirty (30) days after the service of the citation. In any~~
4 case in which a physician disputes allegations made in a complaint,
5 the matter shall be set and heard by the Board at the next regular
6 meeting of the Board occurring at least thirty (30) calendar days
7 after the day of service of the citation, exclusive of the day of
8 service, but will be heard not later than the next regular meeting
9 of the Board occurring after ninety (90) calendar days after service
10 of the citation, exclusive of the day of service. No continuance
11 may be granted by the Board on its own motion or at the request of
12 the defendant or his or her counsel or at the request of the
13 attorney for the state, unless the record of the case, either orally
14 or in writing, sets forth a finding that the ends of justice served
15 by the granting of such continuance outweigh the best interest of
16 the public and the defendant in a speedy hearing. The defendant
17 shall file a written answer under oath with the secretary of the
18 Board within twenty (20) calendar days after the service of the
19 citation, exclusive of the day of service. The secretary of the
20 Board may extend the time of answer upon satisfactory showing that
21 the defendant is for reasonable cause unable to answer within the
22 twenty (20) calendar days exclusive of the day of service, but in no
23 case shall the time be extended beyond the date of the next regular
24 meeting of the Board, unless a continuance is granted by the Board.

1 SECTION 19. AMENDATORY 59 O.S. 2011, Section 503.1, is
2 amended to read as follows:

3 Section 503.1. The Secretary of the Board, upon concurrence of
4 the President of the Board that an emergency exists for which the
5 immediate suspension of a license is imperative for the public
6 health, safety and welfare, may conduct a hearing as contemplated by
7 Section 314 of Title 75 of the Oklahoma Statutes ~~to~~ and may, upon
8 probable cause, suspend temporarily the license of any person under
9 the jurisdiction of the Board.

10 SECTION 20. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 503.2 of Title 59, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The State Board of Medical Licensure and Supervision may
14 promulgate rules to create administrative remedies for licensee
15 violations of statutory or regulatory prescribed unprofessional
16 conduct.

17 B. The Board is authorized to prescribe by rule administrative
18 remedies, disciplinary actions and administrative procedures to
19 provide remedies and disciplinary actions for licensee violations of
20 statutory or regulatory prescribed unprofessional conduct, to
21 include fines up to the limits otherwise prescribed by statute or
22 rule.

23 C. Any such administrative action rules promulgated by the
24 Board shall provide procedure:

1 1. For the licensee to contest or dispute any administrative
2 action;

3 2. For procedures for resolution of any such contest or
4 dispute; and

5 3. For appropriate protection of private information consistent
6 with state and federal law.

7 SECTION 21. AMENDATORY 59 O.S. 2011, Section 508, is
8 amended to read as follows:

9 Section 508. A. Whenever any license has been procured or
10 obtained by fraud or misrepresentation on the licensure application,
11 or was issued by mistake; or if the diploma of graduation in
12 medicine and surgery or any other credentials required as necessary
13 to the admission to the examination for license were obtained by
14 fraud or misrepresentation on the licensure application, or were
15 issued by mistake; or if the reciprocity endorsement from another
16 state, upon which a license has been issued in this state, was
17 procured by fraud or misrepresentation, or was issued by mistake, it
18 shall be the duty of the State Board of Medical Licensure and
19 Supervision to take appropriate disciplinary action in the same
20 manner as is provided by the Oklahoma Allopathic Medical and
21 Surgical Licensure and Supervision Act for the disciplining of
22 unprofessional conduct or in cases of unintentional
23 misrepresentation of information on the licensure application, the
24 State Board of Medical Licensure and Supervision delegates to the

1 Board Secretary the ability to issue a nondisciplinary
2 administrative fine of up to but not more than One Thousand Dollars
3 (\$1,000.00) per licensure applicant or to require a continuing
4 medical education course in ethics, or to take both actions, to
5 impress upon the applicant the seriousness of completing the
6 application truthfully.

7 B. Use of fraudulent information to obtain a license shall be a
8 misdemeanor offense, punishable, upon conviction, by the imposition
9 of a fine of not less than One Thousand Dollars (\$1,000.00), or by
10 imprisonment in the county jail for not more than one (1) year, or
11 by both such fine and imprisonment.

12 SECTION 22. AMENDATORY 59 O.S. 2011, Section 509, as
13 amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018,
14 Section 509), is amended to read as follows:

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

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

24

1 4. Habitual intemperance or the habitual use of habit-forming
2 drugs;

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

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

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

12 a. the antinarcotic or prohibition laws and regulations
13 of the federal government,

14 b. the laws of this state, ~~or~~

15 c. State Board of Health rules, or

16 d. a determination by a judge or jury;

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

19 9. The commission of any act which is a violation of the
20 criminal laws of any state when such act is connected with the
21 physician's practice of medicine. A complaint, indictment or
22 confession of a criminal violation shall not be necessary for the
23 enforcement of this provision. Proof of the commission of the act
24

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 and not prescribing in a safe, medically-
11 accepted manner;

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

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

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

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

- 17 16. a. Prescribing, dispensing or administering of controlled
18 substances or narcotic drugs in excess of the amount
19 considered good medical practice,
20 b. prescribing, dispensing or administering controlled
21 substances or narcotic drugs without medical need in
22 accordance with pertinent licensing board standards,
23 or
24

1 c. prescribing, dispensing or administering opioid drugs
2 in excess of the maximum dosage authorized under
3 Section ~~5 of this act~~ 2-309I of Title 63 of the
4 Oklahoma Statutes;

5 17. Engaging in physical conduct with a patient which is sexual
6 in nature, or in any verbal behavior which is seductive or sexually
7 demeaning to a patient;

8 18. Failure to maintain an office record for each patient which
9 accurately reflects the evaluation, treatment, and medical necessity
10 of treatment of the patient;

11 19. Failure to provide necessary ongoing medical treatment when
12 a doctor-patient relationship has been established, which
13 relationship can be severed by either party providing a reasonable
14 period of time is granted; or

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

22 SECTION 23. AMENDATORY 59 O.S. 2011, Section 509.1, is
23 amended to read as follows:

24 Section 509.1.

1 A. RANGE OF ACTIONS: The State Board of Medical Licensure and
2 Supervision may impose disciplinary actions in accordance with the
3 severity of violation of the Oklahoma Allopathic Medical and
4 Surgical Licensure and Supervision Act. Disciplinary actions may
5 include, but are not limited to the following:

6 1. Revocation of the medical license with or without the right
7 to reapply;

8 2. Suspension of the medical license;

9 3. Probation;

10 4. Stipulations, limitations, restrictions, and conditions
11 relating to practice;

12 5. Censure, including specific redress, if appropriate;

13 6. Reprimand;

14 7. A period of free public or charity service;

15 8. Satisfactory completion of an educational, training, and/or
16 treatment program or programs; and

17 9. Administrative fines of up to Five Thousand Dollars
18 (\$5,000.00) per violation.

19 Provided, as a condition of disciplinary action sanctions, the Board
20 may impose as a condition of any disciplinary action, the payment of
21 costs expended by the Board for any legal fees and costs and
22 probation and monitoring fees including, but not limited to, staff
23 time, salary and travel expense, witness fees and attorney fees.

24

1 The Board may take such actions singly or in combination as the
2 nature of the violation requires.

3 B. LETTER OF CONCERN: The Board may authorize the secretary to
4 issue a confidential letter of concern to a licensee when evidence
5 does not warrant formal proceedings, but the secretary has noted
6 indications of possible errant conduct that could lead to serious
7 consequences and formal action. The letter of concern may contain,
8 at the secretary's discretion, clarifying information from the
9 licensee.

10 C. EXAMINATION/EVALUATION: The Board may, upon reasonable
11 cause, require professional competency, physical, mental, or
12 chemical dependency examinations of any licensee, including
13 withdrawal and laboratory examination of body fluids.

14 D. DISCIPLINARY ACTION AGAINST LICENSEES:

15 1. The Board shall promulgate rules describing acts of
16 unprofessional or unethical conduct by physicians pursuant to the
17 Oklahoma Allopathic Medical and Surgical Licensure and Supervision
18 Act; and

19 2. Grounds for Action: The Board may take disciplinary action
20 for unprofessional or unethical conduct as deemed appropriate based
21 upon the merits of each case and as set out by rule. The Board
22 shall not revoke the license of a person otherwise qualified to
23 practice allopathic medicine within the meaning of the Oklahoma
24 Allopathic Medical and Surgical Licensure and Supervision Act solely

1 because the person's practice or a therapy is experimental or
2 nontraditional.

3 Reports of all disciplinary action provided for in this section
4 will be available to the public upon request. Investigative files
5 shall remain confidential.

6 E. SURRENDER IN LIEU OF PROSECUTION:

7 1. The Board may accept a surrender of license from a licensee
8 who has engaged in unprofessional conduct in lieu of Board staff
9 prosecuting a pending disciplinary action or filing formal
10 disciplinary proceedings only as provided in this section. To
11 effect such a surrender, the licensee must submit a sworn statement
12 to the Board:

- 13 a. expressing the licensee's desire to surrender the
14 license,
- 15 b. acknowledging that the surrender is freely and
16 voluntarily made, that the licensee has not been
17 subjected to coercion or duress, and that the licensee
18 is fully aware of the consequences of the license
19 surrender,
- 20 c. stating that the licensee is the subject of an
21 investigation or proceeding by the Board or a law
22 enforcement or other regulatory agency involving
23 allegations which, if proven, would constitute grounds
24 for disciplinary action by the Board, and

1 d. specifically admitting to and describing the
2 misconduct.

3 2. The sworn written statement must be submitted with the
4 licensee's wallet card and wall certificate. The Secretary or
5 Executive Director of the Board may accept the sworn statement,
6 wallet card and wall certificate from a licensee pending formal
7 acceptance by the Board. The issuance of a complaint and citation
8 by the Board shall not be necessary for the Board to accept a
9 surrender under this subsection. A surrender under this subsection
10 shall be considered disciplinary action by the Board in all cases,
11 even in cases where surrender occurs prior to the issuance of a
12 formal complaint and citation, and shall be reported as disciplinary
13 action by the Board to the public and any other entity to whom the
14 Board regularly reports disciplinary actions.

15 3. As a condition to acceptance of the surrender, the Board may
16 require the licensee to pay the costs expended by the Board for any
17 legal fees and costs and any investigation, probation and monitoring
18 fees including, but not limited to, staff time, salary and travel
19 expense, witness fees and attorney fees.

20 4. The licensee whose surrender in lieu of prosecution is
21 accepted by the Board shall be ineligible to reapply for
22 reinstatement of his or her license for at least one (1) year from
23 the date of the accepted surrender.

1 F. ALL LICENSED PROFESSIONALS: All disciplinary actions
2 defined in this section are applicable to any and all professional
3 licensees under the legislative jurisdiction of the State Board of
4 Medical Licensure and Supervision.

5 SECTION 24. AMENDATORY 59 O.S. 2011, Section 512, as
6 amended by Section 3, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2018,
7 Section 512), is amended to read as follows:

8 Section 512. A. The secretary of the State Board of Medical
9 Licensure and Supervision shall be paid an annual salary in an
10 amount fixed by the Board. The Board shall have the authority to
11 expend such funds as are necessary in carrying out the duties of the
12 Board and shall have the authority to hire all necessary personnel,
13 at salaries to be fixed by the Board, as the Board shall deem
14 necessary. The Board shall have the authority to hire attorneys to
15 represent the Board in all legal matters and to assist authorized
16 state and county officers in prosecuting or restraining violations
17 of Section 481 et seq. of this title, and to fix the salaries or per
18 diem of ~~said~~ the attorneys.

19 B. The Board shall have the authority to hire one or more
20 investigators as may be necessary to carry out the provisions of
21 ~~this act~~ the Oklahoma Allopathic Medical and Surgical Licensure and
22 Supervision Act at an annual salary to be fixed by the Board. Such
23 investigators may be commissioned peace officers of this state. In
24 addition such investigators shall have the authority and duty to

1 investigate and inspect the records of all persons in order to
2 determine whether or not a disciplinary action for unprofessional
3 misconduct is warranted or whether the narcotic laws or the
4 dangerous drug laws have been complied with.

5 C. 1. For purposes of this section, investigators shall be
6 peace officers certified by the Council on Law Enforcement Education
7 and Training and shall have statewide jurisdiction to perform the
8 duties authorized by this section. In addition, the investigators
9 shall have all the powers now or hereafter vested by law in peace
10 officers.

11 2. Investigators for the Oklahoma State Board of Medical
12 Licensure and Supervision shall perform such services as are
13 necessary in the investigation of criminal activity or preparation
14 of administrative actions.

15 3. Any licensee or applicant for license subject to the
16 provisions of the Oklahoma Allopathic Medical and Surgical Licensure
17 and Supervision Act shall be deemed to have given consent to any
18 duly authorized investigator of the Board to access, enter or
19 inspect the records, either on-site or at the Board office, or
20 facilities of such licensee or applicant subject to the Oklahoma
21 Allopathic Medical and Surgical Licensure and Supervision Act.
22 Refusal to allow such access, entry or inspection may constitute
23 grounds for the denial, nonrenewal, suspension or revocation of a
24 license. Upon refusal of such access, entry or inspection, pursuant

1 to this section, the Board or a duly authorized representative may
2 make application for and obtain a search warrant from the district
3 court where the facility or records are located to allow such
4 access, entry or inspection.

5 D. 1. The Board is specifically authorized to contract with
6 state agencies or other bodies to perform investigative services or
7 other administrative services at a rate set by the Board.

8 2. The Board is authorized to pay the travel expenses of Board
9 employees and members in accordance with the State Travel
10 Reimbursement Act.

11 3. The expenditures authorized herein to include capital
12 purchases shall not be a charge against the state, but the same
13 shall be paid solely from the Board's depository fund.

14 SECTION 25. AMENDATORY 59 O.S. 2011, Section 513, is
15 amended to read as follows:

16 Section 513. A. 1. The State Board of Medical Licensure and
17 Supervision is hereby given quasi-judicial powers while sitting as a
18 Board for the purpose of revoking, suspending or imposing other
19 disciplinary actions upon the license of physicians or surgeons of
20 this state, and appeals from its decisions shall be taken to the
21 Supreme Court of this state within thirty (30) days of the date that
22 a copy of the decision is mailed to the appellant, as shown by the
23 certificate of mailing attached to the decision.

24

1 2. The license of any physician or surgeon who has been
2 convicted of any felony in or without the State of Oklahoma and
3 whether in a state or federal court, may be suspended by the Board
4 upon the submission thereto of a certified copy of the judgment and
5 sentence of the trial court and the certificate of the clerk of the
6 court of the conviction.

7 3. Upon proof of a ~~final~~ felony conviction by the courts ~~and~~
8 ~~after exhaustion of the appellate process~~, the Board shall revoke
9 the physician's license. If the felony conviction is overturned on
10 appeal and no other appeals are sought, the Board shall restore the
11 license of the physician. ~~Suspension or revocation of the license~~
12 ~~of any person convicted of a felony on any other grounds than that~~
13 ~~of moral turpitude or the violation of the federal or state narcotic~~
14 ~~laws, shall be on the merits of the particular case, but the court~~
15 Court records in the trial of such case when of such a conviction
16 ~~has been had~~ shall be prima facie evidence of the conviction.

17 4. The Board shall also revoke and cancel the license of any
18 physician or surgeon who has been charged in a court of record of
19 this or other states of the United States or in the federal court
20 with the commission of a felony and who is a fugitive from justice,
21 upon the submission of a certified copy of the charge together with
22 a certificate from the clerk of the court that after the commitment
23 of the crime the physician or surgeon fled from the jurisdiction of
24 the court and is a fugitive from justice.

1 B. To the extent necessary to allow the Board the power to
2 enforce disciplinary actions imposed by the Board, in the exercise
3 of its authority, the Board may punish willful violations of its
4 orders and impose additional penalties as allowed by Section 509.1
5 of this title.

6 SECTION 26. AMENDATORY 59 O.S. 2011, Section 518.1, is
7 amended to read as follows:

8 Section 518.1. A. There is hereby established the Allied
9 Professional Peer Assistance Program to rehabilitate allied medical
10 professionals whose competency may be compromised because of the
11 abuse of drugs or alcohol, so that such allied medical professionals
12 can be treated and can return to or continue the practice of allied
13 medical practice in a manner which will benefit the public. The
14 program shall be under the supervision and control of the State
15 Board of Medical Licensure and Supervision.

16 B. The Board may appoint one or more peer assistance evaluation
17 advisory committees, hereinafter called the "allied peer assistance
18 committees". Each of these committees shall be composed of members,
19 the majority of which shall be licensed allied medical professionals
20 with expertise in chemical dependency. The allied peer assistance
21 committees shall function under the authority of the State Board of
22 Medical Licensure and Supervision in accordance with the rules of
23 the Board. The program may be one hundred percent (100%) outsourced
24 to professional groups specialized in this arena. The committee

1 members shall serve without pay, but may be reimbursed for the
2 expenses incurred in the discharge of their official duties in
3 accordance with the State Travel Reimbursement Act.

4 C. The Board may appoint and employ a qualified person or
5 persons to serve as program coordinators and shall fix such person's
6 compensation. The program may employ a director for purposes of
7 ongoing nonclerical administrative duties and shall fix the
8 director's compensation. The Board shall define the duties of the
9 program coordinators and director who shall report directly to the
10 Board.

11 D. The Board is authorized to adopt and revise rules, not
12 inconsistent with the Oklahoma Allopathic Medical and Surgical
13 Licensure and Supervision Act, as may be necessary to enable it to
14 carry into effect the provisions of this section.

15 E. A portion of licensing fees for each allied profession, not
16 to exceed Ten Dollars (\$10.00), may be used to implement and
17 maintain the Allied Professional Peer Assistance Program.

18 F. All monies paid pursuant to subsection E of this section
19 shall be deposited in an agency special account revolving fund under
20 the State Board of Medical Licensure and Supervision, and shall be
21 used for the general operating expenses of the Allied Professional
22 Peer Assistance Program, including payment of personal services.

23 G. Records and management information system of the
24 professionals enrolled in the Allied Professional Peer Assistance

1 Program and reports shall be maintained in the program office in a
2 place separate and apart from the records of the Board. The records
3 shall be made public only by subpoena and court order; provided
4 however, confidential treatment shall be cancelled upon default by
5 the professional in complying with the requirements of the program.

6 H. Any person making a report to the Board or to an allied peer
7 assistance committee regarding a professional suspected of
8 practicing allied medical practice while habitually intemperate or
9 addicted to the use of habit-forming drugs, or a professional's
10 progress or lack of progress in rehabilitation, shall be immune from
11 any civil or criminal action resulting from such reports, provided
12 such reports are made in good faith.

13 I. A professional's participation in the Allied Professional
14 Peer Assistance Program in no way precludes additional proceedings
15 by the Board for acts or omissions of acts not specifically related
16 to the circumstances resulting in the professional's entry into the
17 program. However, in the event the professional defaults from the
18 program, the Board may discipline the professional for those acts
19 which led to the professional entering the program.

20 J. The Executive Director of the Board shall suspend the
21 license immediately upon notification that the licensee has
22 defaulted from the Allied Professional Peer Assistance Program, and
23 shall assign a hearing date for the matter to be presented to the
24 Board.

1 K. All treatment information, whether or not recorded, and all
2 communications between a professional and therapist are both
3 privileged and confidential. In addition, the identity of all
4 persons who have received or are receiving treatment services shall
5 be considered confidential and privileged.

6 L. As used in this section, unless the context otherwise
7 requires:

8 1. "Board" means the State Board of Medical Licensure and
9 Supervision; and

10 2. "Allied peer assistance committee" means the peer assistance
11 evaluation advisory committee created in this section, which is
12 appointed by the State Board of Medical Licensure and Supervision to
13 carry out specified duties.

14 M. The Allied Professional Peer Assistance Program may contract
15 with outside entities for services that are not available to it or
16 can be obtained for a lesser cost through such a contract. The
17 contract shall be ratified by the Board.

18 SECTION 27. This act shall become effective November 1, 2019.

19
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21
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23
24

1 Passed the Senate the 27th day of February, 2019.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

7
8 _____
9 Presiding Officer of the House
10 of Representatives