

1 ENGROSSED HOUSE
2 BILL NO. 1182

By: Olsen, Moore, West (Kevin),
Gann, Humphrey, Smith,
Boles, Hardin (David),
Roberts (Sean), Roberts
(Dustin), Davis, Russ,
Steagall, Stark, Taylor,
Crosswhite Hader, Townley,
McCall, McDugle, Miller,
Hilbert, Sims, Lepak,
Lawson, Vancuren, Sanders,
Hill and Randleman of the
House

8 and

9 Allen and Bullard of the
10 Senate

11
12 An Act relating to physician licensure; amending 59
13 O.S. 2011, Sections 509, as last amended by Section
14 8, Chapter 492, O.S.L. 2019 and 637, as amended by
15 Section 31, Chapter 363, O.S.L. 2019 (59 O.S. Supp.
16 2019, Sections 509 and 637), which relate to
17 unprofessional conduct; broadening certain
18 definitions to include certain acts; amending 63 O.S.
19 2011, Section 1-731, which relates to abortion;
20 prohibiting issuance or renewal of physician license
21 for certain acts; requiring State Board of Medical
22 Licensure and Supervision and State Board of
23 Osteopathic Examiners to revoke licenses for certain
24 acts; providing exceptions; directing promulgation of
rules; directing Office of the Attorney General to
calculate certain costs; requiring reporting of
certain records; and providing for codification.

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

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last
2 amended by Section 8, Chapter 492, O.S.L. 2019 (59 O.S. Supp. 2019,
3 Section 509), is amended to read as follows:

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

- 7 1. Procuring, aiding or abetting a criminal operation;
- 8 2. The obtaining of any fee or offering to accept any fee,
9 present or other form of remuneration whatsoever, on the assurance
10 or promise that a manifestly incurable disease can or will be cured;
- 11 3. Willfully betraying a professional secret to the detriment
12 of the patient;
- 13 4. Habitual intemperance or the habitual use of habit-forming
14 drugs;
- 15 5. Conviction or confession of, or plea of guilty, nolo
16 contendere, no contest or Alford plea to a felony or any offense
17 involving moral turpitude;
- 18 6. All advertising of medical business in which statements are
19 made which are grossly untrue or improbable and calculated to
20 mislead the public;
- 21 7. Conviction or confession of, or plea of guilty, nolo
22 contendere, no contest or Alford plea to a crime involving violation
23 of:

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- a. the antinarcotic or prohibition laws and regulations of the federal government,
- b. the laws of this state,
- c. State Board of Health rules, or
- d. a determination by a judge or jury;

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

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

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

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

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

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

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

8 15. The inability to practice medicine with reasonable skill
9 and safety to patients by reason of age, illness, drunkenness,
10 excessive use of drugs, narcotics, chemicals, or any other type of
11 material or as a result of any mental or physical condition. In
12 enforcing this section the State Board of Medical Licensure and
13 Supervision may, upon probable cause, request a physician to submit
14 to a mental or physical examination by physicians designated by it.
15 If the physician refuses to submit to the examination, the Board
16 shall issue an order requiring the physician to show cause why the
17 physician will not submit to the examination and shall schedule a
18 hearing on the order within thirty (30) days after notice is served
19 on the physician, exclusive of the day of service. The physician
20 shall be notified by either personal service or by certified mail
21 with return receipt requested. At the hearing, the physician and
22 the physician's attorney are entitled to present any testimony and
23 other evidence to show why the physician should not be required to
24 submit to the examination. After a complete hearing, the Board

1 shall issue an order either requiring the physician to submit to the
2 examination or withdrawing the request for examination. The medical
3 license of a physician ordered to submit for examination may be
4 suspended until the results of the examination are received and
5 reviewed by the Board;

6 16. a. Prescribing, dispensing or administering of controlled
7 substances or narcotic drugs in excess of the amount
8 considered good medical practice,

9 b. prescribing, dispensing or administering controlled
10 substances or narcotic drugs without medical need in
11 accordance with pertinent licensing board standards,
12 or

13 c. prescribing, dispensing or administering opioid drugs
14 in excess of the maximum dosage authorized under
15 Section 2-309I of Title 63 of the Oklahoma Statutes;

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

19 18. Failure to maintain an office record for each patient which
20 accurately reflects the evaluation, treatment, and medical necessity
21 of treatment of the patient;

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

3 20. Performance of an abortion as defined by Section 1-730 of
4 Title 63 of the Oklahoma Statutes and shall be grounds for denial or
5 revocation of a medical license. This provision shall not apply to
6 an abortion necessary to prevent the death of the mother, or to
7 prevent substantial or irreversible physical impairment of the
8 mother that substantially increases the risk of death. The
9 performance of an abortion on the basis of the mental or emotional
10 health of the mother shall be grounds for denial or revocation of a
11 medical license. No such condition may be determined to exist if it
12 is based on a claim or diagnosis that the woman may engage in
13 conduct which she intends to result in her death; or

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

21 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as
22 amended by Section 31, Chapter 363, O.S.L. 2019 (59 O.S. Supp. 2019,
23 Section 637), is amended to read as follows:

1 Section 637. A. The State Board of Osteopathic Examiners may
2 refuse to admit a person to an examination or may refuse to issue or
3 reinstate or may suspend or revoke any license issued or reinstated
4 by the Board upon proof that the applicant or holder of such a
5 license:

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

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

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

22 b. using intimidation, coercion or deception to obtain or
23 retain a patient or discourage the use of a second
24 opinion or consultation,

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

1 without sufficient examination or the establishment of
2 a physician/patient relationship, or for other than
3 medically accepted therapeutic or experimental or
4 investigational purpose duly authorized by a state or
5 federal agency, or not in good faith to relieve pain
6 and suffering, or not to treat an ailment, physical
7 infirmity or disease, or violating any state or
8 federal law on controlled dangerous substances,

9 h. engaging in any sexual activity within a
10 physician/patient relationship,

11 i. terminating the care of a patient without adequate
12 notice or without making other arrangements for the
13 continued care of the patient,

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

19 k. failing to comply with any subpoena issued by the
20 Board,

21 l. violating a probation agreement or order with this
22 Board or any other agency, and
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1 m. failing to keep complete and accurate records of
2 purchase and disposal of controlled drugs or narcotic
3 drugs;

4 3. Has engaged in gross negligence, gross malpractice or gross
5 incompetence;

6 4. Has engaged in repeated acts of negligence, malpractice or
7 incompetence;

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

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

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

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

4 9. Has been guilty of advertising by means of knowingly false
5 or deceptive statements;

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

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

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

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

16 14. Has performed an abortion as defined by Section 1-730 of
17 Title 63 of the Oklahoma Statutes which shall be grounds for denial
18 or revocation of a medical license. This provision shall not apply
19 to an abortion necessary to prevent the death of the mother, or to
20 prevent substantial or irreversible physical impairment of the
21 mother that substantially increases the risk of death. The
22 performance of an abortion on the basis of the mental or emotional
23 health of the mother shall be grounds for denial or revocation of a
24 medical license. No such condition may be determined to exist if it

1 is based on a claim or diagnosis that the woman may engage in
2 conduct which she intends to result in her death; and

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

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

15 C. The State Board of Osteopathic Examiners shall have the
16 power to order or subpoena the attendance of witnesses, the
17 inspection of records and premises and the production of relevant
18 books and papers for the investigation of matters that may come
19 before them. The presiding officer of said Board shall have the
20 authority to compel the giving of testimony as is conferred on
21 courts of justice.

22 D. Any osteopathic physician in the State of Oklahoma whose
23 license to practice osteopathic medicine is revoked or suspended
24 under the previous paragraphs of this section shall have the right

1 to seek judicial review of a ruling of the Board pursuant to the
2 Administrative Procedures Act.

3 E. The Board may enact rules and regulations pursuant to the
4 Administrative Procedures Act setting out additional acts of
5 unprofessional conduct; which acts shall be grounds for refusal to
6 issue or reinstate, or for action to condition, suspend or revoke a
7 license.

8 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-731, is
9 amended to read as follows:

10 Section 1-731. A. No person shall perform or induce an
11 abortion upon a pregnant woman ~~unless that person is a physician~~
12 ~~licensed to practice medicine in the State of Oklahoma.~~ Any person,
13 other than a physician licensed to practice medicine in the State of
14 Oklahoma, violating this section shall be guilty of a felony
15 punishable by imprisonment for not less than one (1) year nor more
16 than three (3) years in the State Penitentiary.

17 B. Any physician licensed to practice medicine in the State of
18 Oklahoma participating in the performance of an abortion, except as
19 provided in Section 1-732 of Title 63 of the Oklahoma Statutes,
20 shall have his or her license to practice medicine in this state
21 suspended for a minimum of one (1) year and shall be fined a minimum
22 of Five Hundred Dollars (\$500.00). The State Board of Medical
23 Licensure and Supervision shall revoke the license of an allopathic
24 physician performing an abortion in this state. The State Board of

1 Osteopathic Examiners shall revoke the license of an osteopathic
2 physician performing an abortion in this state. For the purposes of
3 this section, "abortion" shall have the same meaning provided by
4 Section 1-730 of this title and shall be grounds for denial or
5 revocation of a medical license. This provision shall not apply to
6 an abortion necessary to prevent the death of the mother, or to
7 prevent substantial or irreversible physical impairment of the
8 mother that substantially increases the risk of death. The
9 performance of an abortion on the basis of the mental or emotional
10 health of the mother shall be grounds for denial or revocation of a
11 medical license. No such condition may be determined to exist if it
12 is based on a claim or diagnosis that the woman may engage in
13 conduct which she intends to result in her death.

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

18 D. The State Board of Medical Licensure and Supervision, State
19 Board of Osteopathic Examiners and State Board of Health shall
20 promulgate rules to implement the provisions of this act.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-731.3 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

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