

An Act

ENROLLED HOUSE
BILL NO. 1102

By: Olsen, West (Rick), Hardin
(David), Boles, Conley,
Smith, West (Kevin),
Humphrey, Russ, Stark,
Crosswhite Hader, McDugle,
Grego, Wolfley, Kendrix,
Mize, O'Donnell, Lawson,
Stearman, Gann, Dobrinski,
Patzkowsky, West (Tammy),
Manger, Roberts (Sean),
Lepak, Dills and Steagall
of the House

and

Daniels, Bullard, Allen,
Bergstrom, Stephens and
Jett of the Senate

An Act relating to physician licensure; amending 59 O.S. 2011, Sections 509, as last amended by Section 36, Chapter 161, O.S.L. 2020, and 637, as last amended by Section 42, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020, Sections 509 and 637), which relate to unprofessional conduct; updating statutory term; broadening certain definitions to include certain acts; providing exceptions; providing penalties; directing Office of the Attorney General to calculate certain costs; requiring reporting of certain records; providing for enforcement and effect under certain circumstances; providing for noncodification; and providing an effective date.

SUBJECT: Physician licensure

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

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

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

1. Procuring, aiding or abetting a criminal operation;
2. The obtaining of any fee or offering to accept any fee, present or other form of remuneration whatsoever, on the assurance or promise that a manifestly incurable disease can or will be cured;
3. Willfully betraying a professional secret to the detriment of the patient;
4. Habitual intemperance or the habitual use of habit-forming drugs;
5. Conviction or confession of, or plea of guilty, nolo contendere, no contest or Alford plea to a felony or any offense involving moral turpitude;
6. All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
7. Conviction or confession of, or plea of guilty, nolo contendere, no contest or Alford plea to a crime involving violation of:
 - a. the antinarcotic or prohibition laws and regulations of the federal government,
 - b. the laws of this state,
 - c. State ~~Board~~ Commissioner 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;

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

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

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

submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. The medical license of a physician ordered to submit for examination may be suspended until the results of the examination are received and reviewed by the Board;

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

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

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

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

20. Performance of an abortion as defined by Section 1-730 of Title 63 of the Oklahoma Statutes, except for an abortion necessary to prevent the death of the mother or to prevent substantial or irreversible physical impairment of the mother that substantially increases the risk of death. The performance of an abortion on the basis of the mental or emotional health of the mother shall be a violation of this paragraph, notwithstanding a claim or diagnosis that the woman may engage in conduct which she intends to result in her death. The Board shall impose a penalty as provided in Section 509.1 of this title on a licensee who violates this paragraph. The penalty shall include, but not be limited to, suspension of the license for a period of not less than one (1) year; or

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

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

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

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

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

- a. obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; willfully and continually overcharging or overtreating patients; or charging for visits to the physician's office which did not occur or for services which were not rendered,
- b. using intimidation, coercion or deception to obtain or retain a patient or discourage the use of a second opinion or consultation,
- c. willfully performing inappropriate or unnecessary treatment, diagnostic tests or osteopathic medical or surgical services,

- d. delegating professional responsibilities to a person who is not qualified by training, skill, competency, age, experience or licensure to perform them, noting that delegation may only occur within an appropriate doctor-patient relationship, wherein a proper patient record is maintained including, but not limited to, at the minimum, a current history and physical,
- e. misrepresenting that any disease, ailment, or infirmity can be cured by a method, procedure, treatment, medicine or device,
- f. acting in a manner which results in final disciplinary action by any professional society or association or hospital or medical staff of such hospital in this or any other state, whether agreed to voluntarily or not, if the action was in any way related to professional conduct, professional competence, malpractice or any other violation of the Oklahoma Osteopathic Medicine Act,
- g. signing a blank prescription form; or dispensing, prescribing, administering or otherwise distributing any drug, controlled substance or other treatment without sufficient examination or the establishment of a physician-patient relationship, or for other than medically accepted therapeutic or experimental or investigational purpose duly authorized by a state or federal agency, or not in good faith to relieve pain and suffering, or not to treat an ailment, physical infirmity or disease, or violating any state or federal law on controlled dangerous substances including, but not limited to, prescribing, dispensing or administering opioid drugs in excess of the maximum limits authorized in Section 2-309I of Title 63 of the Oklahoma Statutes,
- h. engaging in any sexual activity within a physician-patient relationship,
- i. terminating the care of a patient without adequate notice or without making other arrangements for the continued care of the patient,

- j. failing to furnish a copy of a patient's medical records upon a proper request from the patient or legal agent of the patient or another physician; or failing to comply with any other law relating to medical records,
- k. failing to comply with any subpoena issued by the Board,
- l. violating a probation agreement or order with this Board or any other agency, and
- m. failing to keep complete and accurate records of purchase and disposal of controlled drugs or narcotic drugs;

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

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

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

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

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

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

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

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

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

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

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

14. Has performed an abortion as defined by Section 1-730 of Title 63 of the Oklahoma Statutes, except for an abortion necessary to prevent the death of the mother or to prevent substantial or irreversible physical impairment of the mother that substantially increases the risk of death. The performance of an abortion on the basis of the mental or emotional health of the mother shall be a violation of this paragraph, notwithstanding a claim or diagnosis that the woman may engage in conduct which she intends to result in her death. The Board shall impose a penalty as provided in this section and in Section 637.1 of this title on a licensee who violates this paragraph. The penalty shall include, but not be limited to, suspension of the license for a period of not less than one (1) year; or

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

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

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

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

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

SECTION 3. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

In the event that any provision of Section 509 or 637 of Title 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of this act, is challenged in court in any action alleging violation of either the Constitution of the United States of America or the State of Oklahoma, the Office of the Attorney General shall determine the amount of state or local funds expended to defend such action. Such determination shall include the number of hours of time spent by any public employee in such defense multiplied by the rate of compensation paid to such employee, as well as the costs of any outside counsel paid for such purpose, and shall include both direct and indirect costs. The Office of the Attorney General shall report such amounts for each calendar quarter to all members of the Legislature.

SECTION 4. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

In the event that any provision of Section 509 or 637 of Title 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of this act, is ever temporarily or permanently restrained or enjoined by court order, the remaining provisions of such section shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, if such temporary or permanent

restraining order or injunction is stayed, dissolved or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 5. This act shall become effective November 1, 2021.

Passed the House of Representatives the 9th day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____