

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1102

By: Olsen

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6 AS INTRODUCED

7 An Act relating to physician licensure; amending 59
8 O.S. 2011, Sections 509, as last amended by Section
9 36, Chapter 161, O.S.L. 2020, and 637, as last
10 amended by Section 42, Chapter 161, O.S.L. 2020 (59
11 O.S. Supp. 2020, Sections 509 and 637), which relate
12 to unprofessional conduct; updating statutory term;
13 broadening certain definitions to include certain
14 acts; providing exceptions; providing penalties;
15 directing Office of the Attorney General to calculate
16 certain costs; requiring reporting of certain
17 records; providing for enforcement and effect under
18 certain circumstances; providing for noncodification;
19 and providing an effective date.

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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 1. Procuring, aiding or abetting a criminal operation;
- 2 2. The obtaining of any fee or offering to accept any fee,
3 present or other form of remuneration whatsoever, on the assurance
4 or promise that a manifestly incurable disease can or will be cured;
- 5 3. Willfully betraying a professional secret to the detriment
6 of the patient;
- 7 4. Habitual intemperance or the habitual use of habit-forming
8 drugs;
- 9 5. Conviction or confession of, or plea of guilty, nolo
10 contendere, no contest or Alford plea to a felony or any offense
11 involving moral turpitude;
- 12 6. All advertising of medical business in which statements are
13 made which are grossly untrue or improbable and calculated to
14 mislead the public;
- 15 7. Conviction or confession of, or plea of guilty, nolo
16 contendere, no contest or Alford plea to a crime involving violation
17 of:
 - 18 a. the antinarcotic or prohibition laws and regulations
19 of the federal government,
 - 20 b. the laws of this state,
 - 21 c. State ~~Board~~ Commissioner of Health rules, or
 - 22 d. a determination by a judge or jury;
- 23 8. Dishonorable or immoral conduct which is likely to deceive,
24 defraud, or harm the public;

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

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

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

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

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

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

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

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- 1 16. a. Prescribing, dispensing or administering of controlled
2 substances or narcotic drugs in excess of the amount
3 considered good medical practice,
4 b. prescribing, dispensing or administering controlled
5 substances or narcotic drugs without medical need in
6 accordance with pertinent licensing board standards,
7 or
8 c. prescribing, dispensing or administering opioid drugs
9 in excess of the maximum limits authorized in Section
10 2-309I of Title 63 of the Oklahoma Statutes;

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

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

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

21 20. Performance of an abortion as defined by Section 1-730 of
22 Title 63 of the Oklahoma Statutes, except for an abortion necessary
23 to prevent the death of the mother or to prevent substantial or
24 irreversible physical impairment of the mother that substantially

1 increases the risk of death. The performance of an abortion on the
2 basis of the mental or emotional health of the mother shall be a
3 violation of this paragraph, notwithstanding a claim or diagnosis
4 that the woman may engage in conduct which she intends to result in
5 her death. The Board shall impose a penalty as provided in Section
6 509.1 of this title on a licensee who violates this paragraph. The
7 penalty shall include, but not be limited to, suspension of the
8 license for a period of not less than one (1) year; or

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

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

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

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

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

- 11 a. obtaining or attempting to obtain any fee, charge,
12 tuition or other compensation by fraud, deception or
13 misrepresentation; willfully and continually
14 overcharging or overtreating patients; or charging for
15 visits to the physician's office which did not occur
16 or for services which were not rendered,
- 17 b. using intimidation, coercion or deception to obtain or
18 retain a patient or discourage the use of a second
19 opinion or consultation,
- 20 c. willfully performing inappropriate or unnecessary
21 treatment, diagnostic tests or osteopathic medical or
22 surgical services,
- 23 d. delegating professional responsibilities to a person
24 who is not qualified by training, skill, competency,

1 age, experience or licensure to perform them, noting
2 that delegation may only occur within an appropriate
3 doctor-patient relationship, wherein a proper patient
4 record is maintained including, but not limited to, at
5 the minimum, a current history and physical,

6 e. misrepresenting that any disease, ailment, or
7 infirmity can be cured by a method, procedure,
8 treatment, medicine or device,

9 f. acting in a manner which results in final disciplinary
10 action by any professional society or association or
11 hospital or medical staff of such hospital in this or
12 any other state, whether agreed to voluntarily or not,
13 if the action was in any way related to professional
14 conduct, professional competence, malpractice or any
15 other violation of the Oklahoma Osteopathic Medicine
16 Act,

17 g. signing a blank prescription form; or dispensing,
18 prescribing, administering or otherwise distributing
19 any drug, controlled substance or other treatment
20 without sufficient examination or the establishment of
21 a physician-patient relationship, or for other than
22 medically accepted therapeutic or experimental or
23 investigational purpose duly authorized by a state or
24 federal agency, or not in good faith to relieve pain

1 and suffering, or not to treat an ailment, physical
2 infirmity or disease, or violating any state or
3 federal law on controlled dangerous substances
4 including, but not limited to, prescribing, dispensing
5 or administering opioid drugs in excess of the maximum
6 limits authorized in Section 2-309I of Title 63 of the
7 Oklahoma Statutes,

8 h. engaging in any sexual activity within a physician-
9 patient relationship,

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

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

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

20 l. violating a probation agreement or order with this
21 Board or any other agency, and

22 m. failing to keep complete and accurate records of
23 purchase and disposal of controlled drugs or narcotic
24 drugs;

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

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

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

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

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

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

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

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

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

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

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

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

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 Board provided, three-fourths
11 (3/4) of a quorum present at a meeting may vote to suspend a license
12 in an emergency situation if the licensee affected is provided a
13 public hearing within thirty (30) days of the emergency suspension.

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

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

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

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

8 In the event that any provision of Section 509 or 637 of Title
9 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of
10 this act, is challenged in court in any action alleging violation of
11 either the Constitution of the United States of America or the State
12 of Oklahoma, the Office of the Attorney General shall determine the
13 amount of state or local funds expended to defend such action. Such
14 determination shall include the number of hours of time spent by any
15 public employee in such defense multiplied by the rater of
16 compensation paid to such employee, as well as the costs of any
17 outside counsel paid for such purpose, and shall include both direct
18 and indirect costs. The Office of the Attorney General shall report
19 such amounts for each calendar quarter to all members of the
20 Legislature.

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

23 In the event that any provision of Section 509 or 637 of Title
24 59 of the Oklahoma Statutes, as last amended by Section 1 or 2 of

1 this act, is ever temporarily or permanently restrained or enjoined
2 by court order, the remaining provisions of such section shall be
3 enforced as though the restrained or enjoined provisions had not
4 been adopted; provided, however, if such temporary or permanent
5 restraining order or injunction is stayed, dissolved or otherwise
6 ceases to have effect, such provisions shall have full force and
7 effect.

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

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