

ENGROSSED HOUSE
BILL NO. 1285

BY: COX and FALLIN of the
HOUSE

and

BROWN of the SENATE

(PROFESSIONS AND OCCUPATIONS - AMENDING 59 O.S.,
SECTIONS 143, 164f, 328.49, 491, 588, AND 638 -
MODIFYING CERTAIN UNLAWFUL ACTS - MAKING CERTAIN
ACTS FELONIES -

EMERGENCY)

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

SECTION 1. AMENDATORY 59 O.S. 1981, Section 143, is
amended to read as follows:

Section 143. ~~Unless one be at the time a licensed chiropodist,~~
~~it shall be unlawful for him or her to~~ A. Any person who shall
practice or attempt to practice ~~chiropody~~ podiatry in this state ~~as~~
~~defined by the applicable laws or as otherwise defined or as a~~
~~podiatrist or foot doctor or foot specialist or to hold oneself out~~
~~in any way, either publicly or privately, as any such or as being~~
~~capable of so practicing, except that~~ without having first obtained
a license to practice podiatry from the Oklahoma State Board of
Podiatry, or after his license to practice podiatry has been
revoked, or while such license is under suspension, shall be deemed
guilty of a felony, and upon conviction shall be punishable by a
fine of not less than One Thousand Dollars (\$1,000.00) nor more than
Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment for

not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense. Provided, however, an applicant for a license by examination who has successfully passed the examination the Board gives may practice ~~chiroprody~~ podiatry to the extent necessary to enable him ~~or her~~ to observe and assist a licensed podiatrist, as authorized by the applicable laws, if while so doing he ~~or she~~ complies with ~~those of the~~ all applicable rules and regulations ~~applicable to him or her~~ of the Board.

B. It shall be unlawful:

~~for~~ 1. For a licensed ~~chiropracist~~ podiatrist to practice as such at any time when his ~~or her~~ license is not conspicuously displayed in his ~~or her~~ place of regular practice ~~or to use or maintain, or help use or maintain, an office, clinic, or other place of business for the practice of chiroprody in any county in this state other than the county in which he or she maintains residence in good faith at the time, except as may be otherwise allowed by the rules and regulations. At any time when a license is not in full force and effect under the applicable laws, it shall afford the licensee named therein no right to practice. It shall be unlawful for;~~

2. For any person knowingly to represent in any manner in this state, either publicly or privately, that another person is a licensed ~~chiropracist or chiropracist~~ or podiatrist or foot doctor or foot specialist or capable of examining, diagnosing, recommending for, prescribing for, caring for, or treating in this state ailments, diseased conditions, deformities, or injuries of the human foot, unless such other person at the time of ~~the representing~~ such representation is a licensed ~~chiropracist~~. ~~It shall be unlawful for podiatrist;~~

3. For any licensed ~~chiropracist~~ podiatrist to do any one or more of the following:

- a. violate any provision of ~~this act;~~ the Podiatrist Licensing Act,
- b. violate the code of ethics in any way~~;~~ or
- c. violate the rules and regulations adopted by the Board in any way.

Any person who does any one or more of the things made unlawful by this ~~section~~ subsection shall be deemed guilty of a misdemeanor, and upon conviction shall be ~~fined~~ punishable by a fine of not more than Five Hundred Dollars (\$500.00), ~~or shall be imprisoned by imprisonment~~ in the county jail for not more than six (6) months, ~~or be punished~~ by both such fine and imprisonment; and each separate day on which any person so unlawfully does any one or more of such things shall ~~be and~~ constitute a separate and distinct offense.

SECTION 2. AMENDATORY 59 O.S. 1981, Section 164f, is amended to read as follows:

Section 164f. Any person ~~not in the legal possession of a valid current unrevoked chiropractic renewal license,~~ who after January 1, 1938, shall practice or attempt to practice chiropractic in this state, or who shall hold himself out to the public ~~therein~~ as a practitioner of chiropractic in this state, without having first obtained an original license to practice chiropractic from the Board of Chiropractic Examiners, or after his original license to practice chiropractic has been revoked, or while such original license is under suspension, shall be deemed guilty of a ~~misdemeanor~~ felony, and upon conviction shall be ~~punished~~ punishable by a fine of not less than ~~Fifty Dollars (\$50.00)~~ One Thousand Dollars (\$1,000.00) nor more than ~~Two Hundred Dollars (\$200.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment ~~in the county jail for~~ not less than ~~five (5) days~~ one (1) year nor more than ~~thirty (30) days~~ three (3) years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense.

SECTION 3. AMENDATORY 59 O.S. 1981, Section 328.49, is amended to read as follows:

Section 328.49 A. Any person, ~~firm or corporation~~ who shall practice or attempt to practice dentistry ~~or dental hygiene within the State of Oklahoma,~~ in this state, without having first obtained a license to practice dentistry from the Board of Governors, or after his license ~~or certificate of ability, respectively,~~ shall ~~have to practice dentistry has~~ been revoked or canceled, or while such license is under suspension, as herein provided, ~~or without having complied with the provisions of this act~~ shall be deemed guilty of a ~~misdemeanor~~ felony, and upon conviction shall be punishable by a fine of not less than ~~One Hundred Dollars (\$100.00),~~ and not exceeding ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment ~~in the county jail not less than thirty (30) days nor exceeding~~ for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment. Each day of such violation shall be a separate offense. ~~The writ of injunction, without bond, is also made available to the Board of Governors for the enforcement of this act.~~

B. Any person in this state who shall ~~practice denistry or:~~

1. Practice or attempt to practice dental hygiene or conduct the business of a dental laboratory in this state within the meaning of this act the State Dental Act, without having first obtained a license, ~~or certificate of ability, or permit, respectively,~~ to practice dental hygiene from the Board of Governors, or who violates after his certificate of ability to practice dental hygiene has been revoked or canceled, or while such certificate of ability is under suspension, as herein provided; or

2. Conduct the business of a dental laboratory within the meaning of the State Dental Act, without having first obtained a current annual permit to operate a dental laboratory from the Board

of Governors, or after his permit to operate a dental laboratory has been revoked or canceled, or while such permit is under suspension, as herein provided; or

3. Violate any of the provisions of this act the State Dental Act, the penalty for which violation is not herein specifically provided,

~~shall be deemed guilty of a misdemeanor. Anyone convicted of such misdemeanor under this act, and upon conviction shall be punished~~
punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than ~~twelve (12) months~~ one (1) year, or by both such fine and imprisonment, in the discretion of the court. Each day of such violation shall be a separate offense. ~~The writ of injunction, without bond, is also made available to the Board of Governors for the enforcement of this act.~~

C. Any person, firm, or corporation found guilty of a second and subsequent offense under the provisions of this act, except a violation of subsection A of this section, shall be deemed guilty of a misdemeanor, and upon conviction ~~therefor~~ shall be ~~punished~~
punishable by imprisonment in the county jail for ~~a period of~~ not less than sixty (60) days nor more than one (1) year, and a fine of not less than Five Hundred Dollars (\$500.00), ~~and not exceeding nor more than~~ One Thousand Five Hundred Dollars (\$1,500.00), and shall have his license, certificate of ability, or permit, ~~respectively,~~
as the case may be, revoked for a period of five (5) years by the Board of Governors ~~of the Registered Dentists of Oklahoma.~~ Each day of such violation shall be a separate offense.

D. Orders or judgments of injunction, without bond, may be granted by the district courts to the Board of Governors for the purpose of enforcing the State Dental Act. In addition to any other penalties provided herein, any person found guilty of contempt of

court by reason of the violation of any order or judgment of injunction prohibiting the unlicensed practice of dentistry now in effect or hereafter entered pursuant to any provision of ~~this act~~ the State Dental Act, shall be ~~punished~~ punishable by imprisonment in the county jail for ~~a minimum time of~~ not less than thirty (30) days ~~or a maximum of not~~ nor more than one (1) year, and by a fine of not less than Five Hundred Dollars (\$500.00); and in addition, the court may require the defendant to furnish a good and sufficient bond in a penal sum to be set by the court, not less than One Thousand Dollars (\$1,000.00), which shall be conditioned upon future compliance in all particulars with the order or judgment of injunction entered, and in the event of failure of the defendant to furnish such bond when so ordered, he shall be confined in the county jail pending his compliance therewith. Such bond shall be mandatory as to any person hereafter found guilty of a second contempt of court for violation of any such order or judgment of injunction entered pursuant to ~~this act~~ the State Dental Act, or any prior dental act.

SECTION 4. AMENDATORY 59 O.S. 1981, Section 491, is amended to read as follows:

Section 491. ~~Every~~ Any person ~~before practicing~~ who shall practice or attempt to practice medicine and surgery or any of the branches or departments of such, within the meaning of this act, within ~~the State of Oklahoma,~~ must be in legal possession of the ~~unrevoked license or certificate herein provided for,~~ and any person ~~so practicing in such manner within this state, who is not in such legal possession thereof,~~ this state without having first obtained a license or certificate to practice medicine and surgery from the State Board of Medical Licensure and Supervision, or after his license or certificate to practice medicine and surgery has been revoked, or while such license or certificate is under suspension, shall be deemed guilty of a ~~misdemeanor~~ felony, and shall, upon

~~conviction thereof, in any court having jurisdiction, be fined for the first offense in any sum shall be punishable by a fine of not less than One Hundred Dollars (\$100.00), and not more than Five Hundred Dollars (\$500.00), and shall, for any succeeding offense, be subject to fine in like amount, and in addition thereto, shall be imprisoned in a county jail for a period of time One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment for not less than thirty (30) days, one (1) year nor more than one hundred and eighty (180) days; and in all instances, each day's practice three (3) years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense. It is further provided, that any person who shall render such professional services without first complying with the provisions of this act, shall, in addition to the other penalties herein provided, receive no compensation for such services.~~

SECTION 5. AMENDATORY 59 O.S. 1981, Section 588, as last amended by Section 2, Chapter 72, O.S.L. 1985 (59 O.S. Supp. 1990, Section 588), is amended to read as follows:

Section 588. A. ~~No~~ Any person who shall practice or attempt to practice optometry in this state or who shall hold himself out to the public as a practitioner of optometry in this state, without having first obtained a license or certificate to practice optometry from the Board of Examiners in Optometry, or after his license or certificate to practice optometry has been revoked, or while such license is under suspension, shall be guilty of a felony, and upon conviction shall be punishable by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense.

B. No person shall make any tests or measurements of the human eye for diagnostic purposes unless said person has been issued a certificate pursuant to the provisions of Section 584 of this title or is a physician or surgeon authorized to practice medicine in this state. No person shall impersonate a registered optometrist. No person shall buy, sell or obtain in any manner a certificate of registration or exemption issued to another. ~~Practicing or offering to practice optometry, or the public representation of being qualified to practice optometry, by any person not authorized to practice optometry shall be sufficient evidence of the violation of the provisions of Sections 581 through 604 of this title.~~ No optometrist shall aid or abet any person not authorized to practice optometry in this state to practice optometry. Any Except as provided in subsection A of this section, any person who violates any of the provisions of Sections 581 through 604 of this title shall be deemed guilty of a misdemeanor, and upon conviction for each offense, shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than ninety (90) days, or by both said fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense.

~~B.~~ C. Nothing in the provisions of Sections 581 through 604 of this title shall prohibit the performance of routine visual screening by a person not licensed to practice optometry in this state. Nothing in this section shall prohibit an optometry student officially enrolled in a college of optometry which is approved by the State Regents for Higher Education from performing educational functions within the institution or prohibit an instructor in such optometry college from practicing optometry so long as such practitioner is licensed in any state and his practice is limited to instruction of optometry students in an accredited Oklahoma college

of optometry or state or federal hospital which is utilized as a teaching institution for students of optometry, provided such instructor has been issued a temporary license by the Oklahoma Board of Examiners in Optometry.

SECTION 6. AMENDATORY 59 O.S. 1981, Section 638, as amended by Section 18, Chapter 152, O.S.L. 1983 (59 O.S. Supp. 1990, Section 638), is amended to read as follows:

Section 638. A. Any person who shall, in this state, practice or attempt to practice osteopathic medicine within the meaning of the Oklahoma Osteopathic Medicine Act, without having first obtained a license or certificate to practice osteopathic medicine from the State Board of Osteopathic Examiners, or after his license or certificate to practice osteopathic medicine has been revoked or canceled, or while such license or certificate is under suspension, shall be guilty of a felony, and upon conviction shall be punishable by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense.

B. Each of the following acts shall constitute a misdemeanor, punishable upon conviction, by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for not less than ninety (90) days nor more than one (1) year, or by both such fine and imprisonment:

1. ~~The practice of osteopathic medicine or attempt to practice osteopathic medicine without a license issued by the State Board, and each visit, treatment, prescription, or attempted visit, treatment, or prescription shall constitute a separate and distinct offense;~~

~~2.~~ Obtaining of, or attempting to obtain a license under the provisions of this act, or obtaining, or attempting to obtain money or any other thing of value, by fraudulent representation or false pretense;

~~3.~~ 2. Advertising as an osteopathic physician and surgeon, or practicing or attempting to practice osteopathic medicine under a false, assumed, or fictitious name, or a name other than the real name; and

~~4.~~ 3. Allowing any person in his employment or control to practice as an osteopathic physician and surgeon when not actually licensed to do so.

~~B.~~ C. Any person making any willfully false oath or affirmation whenever oath or affirmation is required by this act shall be deemed guilty of perjury, and upon conviction, shall be punished as prescribed by the general laws of this state.

D. Nothing in this section shall apply to students who, as part of their academic requirements for a Doctor of Osteopathy Degree, are in clinical training under the supervision of a licensed practitioner, or who are graduate students in the initial year of an approved postdoctoral training program.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353.30 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any person who shall practice or attempt to practice in this state pharmacy within the meaning of the Oklahoma Pharmacy Act, without having first obtained a license or certificate to practice pharmacy from the Oklahoma State Board of Pharmacy, or after his license or certificate to practice pharmacy has been revoked or canceled, shall be guilty of a felony, and upon conviction shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by imprisonment for not less than one (1) year nor more than three (3)

years, or by both such fine and imprisonment. Each day of such violation shall constitute a separate and distinct offense.

SECTION 8. All fines collected pursuant to prosecution of this act shall be used to provide medical care for indigent or low income persons.

SECTION 9. This act shall become effective July 1, 1991.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 27th day of February, 1991.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate