

ENROLLED SENATE
BILL NO. 87

By: Fisher of the Senate

and

Tyler of the House

An Act relating to the State Board of Medical Licensure and Supervision; amending 59 O.S. 1991, Sections 485 and 487, as amended by Sections 5 and 6, Chapter 323, O.S.L. 1994, Section 16, Chapter 323, O.S.L. 1994, 495, 503 and 506, as amended by Sections 19, 26 and 29, Chapter 323, O.S.L. 1994 and 509, as amended by Section 1, Chapter 338, O.S.L. 1993 (59 O.S. Supp. 1994, Sections 485, 487, 493.3, 495, 503, 506 and 509), which relate to licensure of physicians, and 74 O.S. 1991, Section 4244, which relates to employment of former Board member; clarifying that secretary of State Board of Medical Licensure and Supervision is not a Board member; authorizing Board to hire physician to serve as secretary-medical advisor; exempting position from classified service and clarifying status of position; modifying qualifications for licensure by endorsement; deleting restriction on where licensee may practice; specifying procedure for reinstatement of a license or certificate and for establishing criteria for measuring professional competence; removing authority to require certain defendant to deposit license with Board; removing requirement that certain charges be dismissed after probation and authority to take certain discretionary action; modifying provision constituting unprofessional conduct; exempting Board from prohibition against hiring former Board member; 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. 1991, Section 485, as amended by Section 5, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 485), is amended to read as follows:

Section 485. The State Board of Medical Licensure and Supervision shall, immediately after the members shall have qualified as such, organize by electing a president, and a vice-president ~~and a secretary~~, and thereafter, at the next regular meeting of the Board, held in the first six (6) months of each calendar year, ~~all such~~ both offices shall become vacant and be filled by another election, ~~except the secretary, who shall serve at the pleasure of the Board.~~

SECTION 2. AMENDATORY 59 O.S. 1991, Section 487, as amended by Section 6, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 487), is amended to read as follows:

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

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

1. Age;
2. Ethnic origin;
3. Sex;
4. Place of practice and residence;
5. The time spent in premedical and medical study, together with the names of the schools attended, and the date of graduation therefrom, with the degrees granted;
6. The grades made in examination for license or grades filed in application therefor; and
7. A record of the final disposition of each application for licensure.

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

SECTION 3. AMENDATORY Section 16, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 493.3), is amended to read as follows:

Section 493.3 A. Endorsement of licensed applicants: The State Board of Medical Licensure and Supervision may issue a license by endorsement to an applicant who:

1. Has complied with all current medical licensure requirements except ~~that~~ those for examination;
2. Has passed a medical licensure examination given in English in another state, the District of Columbia, a territory or possession of the United States, or Canada, provided the Board determines that such examination was equivalent to the Board's examination used at the time of application; and
3. Possesses a valid current medical license in another state, the District of Columbia, a territory or possession of the United States, or Canada.

~~B. Endorsement for Certified Applicants:~~ The Board may, at its discretion, issue a license by endorsement to an applicant who:

1. Has complied with all current medical licensure requirements except ~~that~~ those for examination; and
2. Has passed the examination of and been certified by a certification agency recognized by the Board, provided the Board determines that the examination was equivalent to an examination acceptable to the Board at the time of the application and was not a specialty board examination.

C. ~~Endorsement examination:~~ Notwithstanding any other provision of this act, the Board may require applicants for full and unrestricted medical licensure by endorsement, who have not been formally tested by ~~any~~ another state or territory of the United States or any Canadian medical licensure jurisdiction, a Board-approved medical certification agency, or a Board-approved medical specialty board within a specific period of time before application to pass a written and/or oral medical examination approved by the Board.

D. ~~Temporary licensure:~~ The Board may authorize the secretary to issue a temporary medical license for the intervals between Board meetings. ~~Such~~ A temporary license shall be granted only when the secretary is satisfied as to the qualifications of the applicant to be licensed under this act but where such qualifications have not been verified to the Board. ~~Such a~~ A temporary license shall:

1. Be granted only to an applicant demonstrably qualified for a full and unrestricted medical license under the requirements set by this act and the rules of the Board; and
2. Automatically terminate on the date of the next Board meeting at which the applicant may be considered for a full and unrestricted medical license.

E. ~~Special licensure:~~ The Board may establish rules authorizing the issuance of conditional, restricted, or otherwise circumscribed ~~license licenses~~ licenses as ~~is~~ are necessary for the public health, safety and welfare.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 495, as amended by Section 19, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 495), is amended to read as follows:

Section 495. When an applicant shall have shown that he or she is qualified as herein required, a license, in form approved by the State Board of Medical Licensure and Supervision and signed by all members of the Board, or a quorum thereof, and attested by the seal of the Board, shall be issued to the applicant by ~~said~~ the Board, authorizing the applicant to practice medicine and surgery within the meaning of this act, ~~within the State of Oklahoma.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 495h of Title 59, unless there is created a duplication in numbering, reads as follows:

The Board of Medical Licensure and Supervision may require evidence of professional competence from applicants requesting reinstatement of any license or certificate issued by the Board. The Board may set criteria for measurement of professional competence by rule or may instruct the professional advisory committee to evaluate applicants for current level of professional competence.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 503, as amended by Section 26, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 503), is amended to read as follows:

Section 503. The State Board of Medical Licensure and Supervision may suspend, revoke or order any other appropriate sanctions against the license of any physician or surgeon holding a license to practice in this state for unprofessional conduct, but no such suspension, revocation or other penalty shall be made until ~~such~~ the licensee is cited to appear for hearing. No such citation shall be issued except upon sworn complaint filed with the secretary of the Board, charging the licensee with having been guilty of unprofessional conduct and setting forth the particular act or acts alleged to constitute ~~such~~ unprofessional conduct. In the event it comes to the attention of the Board that a violation of the rules of professional conduct may have occurred, even though a formal

complaint or charge may not have been filed, the Board may conduct an investigation of ~~such~~ the possible violation, and may upon its own motion institute a formal complaint. In the course of ~~such~~ the investigation persons appearing before the Board may be required to testify under oath. Upon the filing of ~~such~~ a complaint, either by an individual or the Board as provided herein, ~~such~~ the citation must forthwith be issued by the secretary of the Board over ~~his~~ the signature of the secretary and seal of the Board, setting forth the complaint of ~~said~~ unprofessional conduct, and giving due notice of the time and place of the hearing by the Board. The citation shall be made returnable at the next regular meeting of the Board occurring at least thirty (30) days ~~next~~ after the service of ~~said~~ the citation. The defendant shall file a written answer ~~thereto~~ under oath with the secretary of the Board within twenty (20) days after the service of the citation. ~~In addition, the Board may require the defendant to deposit with the secretary his or her license authorizing him or her to practice medicine and surgery within this state.~~ The secretary of the Board may extend the time of answer upon satisfactory showing that the defendant is for reasonable cause, unable to answer within the twenty (20) days, but in no case shall the time be extended beyond the date of the next regular meeting of the Board, unless a continuance ~~thereof~~ be is granted by the Board.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 506, as amended by Section 29, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1994, Section 506), is amended to read as follows:

Section 506. If it ~~be~~ is the decision of the State Board of Medical Licensure and Supervision, after considering all the testimony presented, that the defendant is guilty as charged, it shall be the duty of the Board and the Board shall have the power to revoke the license of ~~such~~ the defendant, and the defendant's rights ~~thereunder~~ to practice medicine and surgery, ~~as defined by this act.~~ The Board, however, may suspend ~~such~~ a license for a definite period of time during which suspension the holder of such suspended license shall not be entitled to practice medicine and surgery thereunder. If during suspension, the defendant practiced medicine or surgery or has been guilty of any act of unprofessional conduct, as herein defined, the Board may revoke the license of such licensee. Provided, that the Board shall have power to place the licensee upon probation for any period of time not less than one (1) year, nor more than five (5) years, provided that on second offense the period of probation may be for an indefinite period of time, during which time the licensee's conduct will be kept under observation; ~~at the expiration of such period of probation the charges of unprofessional conduct shall be dismissed; provided, that the defendant shall have been guilty of no additional offense; or the Board may take such other action as at its discretion it may deem proper.~~ Provided further, that the Board may impose on the defendant as a condition of any suspension or probation, that the defendant attend and produce evidence of successful completion of a specific term of education, residency or training in enumerated fields and/or institutions as ordered by the Board based on the facts of the case. Said education, residency or training shall be at the expense of the defendant. Provided, further, that the Board may impose such other disciplinary actions as provided for in Section ~~33~~ 509.1 of this ~~act~~ title. Provided, further, that at the end of any term of suspension imposed by the Board, the applicant for reinstatement shall show to the Board successful completion of all conditions and requirements imposed by the Board and eligibility for reinstatement.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 509, as amended by Section 1, Chapter 338, O.S.L. 1993 (59 O.S. Supp. 1994, Section 509), is amended to read as follows:

Section 509. The words "unprofessional conduct" as used in Sections 481 through 514 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. Advertising to the public in any manner; provided, however, that a person, firm, association or corporation may place an announcement in a newspaper regarding the opening of an office, change of an address or membership in a firm, association or corporation, the closing of an office, permanent or temporary, for whatever reason, and the specialty or specialties of person or persons, firm, association or corporation;
3. 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;
4. Willfully betraying a professional secret to the detriment of the patient;
5. Habitual intemperance or the habitual use of habit-forming drugs;
6. Conviction of a felony or of any offense involving moral turpitude;
7. All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
8. Conviction or confession of a crime involving ~~the~~ violation of:
 - a. the antinarcotic or prohibition laws and regulations of the federal government,
 - b. the laws of this state, or the
 - c. State Board of Health laws and regulations ~~rules of the State of Oklahoma;~~
9. Dishonorable or immoral conduct which is likely to deceive or defraud the public;
10. The commission of any act which is a violation of the criminal laws of this 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;
11. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs;
12. 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;
13. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship;
14. The violation, or attempted violation, direct or indirect, of any of the provisions of this act, either as a principal, accessory or accomplice;
15. Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state;
16. 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 subsection the Board 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 ~~he~~ 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. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and ~~his~~ 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 ~~such~~ the examination are received and reviewed by the Board;

17. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards; or

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

SECTION 9. AMENDATORY 74 O.S. 1991, Section 4244, is amended to read as follows:

Section 4244. A. Except as otherwise provided for by this section, no state board or commission shall employ any former member of the board or commission.

B. A state board or commission may employ a former member of the board or commission if at least one (1) year has passed since the term of office of the former member has expired.

C. The Oklahoma Student Loan Finance Authority and members of its Board of Trustees shall be exempt from the application of this section.

D. The State Board of Medical Licensure and Supervision shall be exempt from the application of this section.

SECTION 10. This act shall become effective November 1, 1995.
Passed the Senate the 9th day of May, 1995.

President of the Senate

Passed the House of Representatives the 17th day of May, 1995.

Speaker of the House of Representatives