

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1466

By: Bastin of the House

and

Herbert of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 139, 147, as amended by Section 11, Chapter 150, O.S.L. 1993, 148, as amended by Section 12, Chapter 150, O.S.L. 1993, 149 and 155 (59 O.S. Supp. 1996, Sections 147 and 148), which relate to the Board of Podiatric Medical Examiners; providing for organization; providing time for election of officers; providing for duties; providing for meetings; providing certain compliance; providing for degree of proof; specifying penalties; modifying and removing certain grounds for penalties; providing for judicial review; requiring bonding; providing for administrative penalties; providing for establishment of certain guidelines; providing for confidential letters for certain violations; removing outdated language relating to administrative procedures; clarifying language; modifying and adding to powers and duties of the Board of Podiatric Medical Examiners; amending 59 O.S. 1991, Section 731.5, which relates to the healing arts; adding to list of persons who are not within scope of the healing arts; amending 59 O.S. 1991, Section 637.1, as amended by Section 18, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 1996, Section 637.1), which relates to the State Board of Osteopathic Examiners; authorizing administrative fines; setting maximum limitations; authorizing letters of concern; providing for use; repealing 59 O.S. 1991, Section 150, which relates to stenographic report of revocation proceedings; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 139, is amended to read as follows:

Section 139. A. The Board of Podiatric Medical Examiners shall ~~hold a regular meeting each year in September for~~

~~transacting such business as properly comes before it. Upon call by any two of its members, it may hold special meetings at any time for transacting any business. It may meet at such times and places in this state as are agreeable to it. It may adjourn any meeting as it determines and meet again at the time or times it appoints. As it determines, it shall organize annually at the last regularly scheduled meeting of the Board before the beginning of the next fiscal year by electing from among its members a president, a vice-president, and a secretary-treasurer. In addition to the duties usually incumbent upon his or her office, each such officer shall perform at all times all duties authorized as to his or her office by the applicable laws and the rules and regulations. Each shall serve in the office to which elected until the close of the September meeting. The term of office of each officer shall be for the following his or her election fiscal year and until his or her a successor is elected, unless the office be vacated sooner by the Board or by removal from membership upon the Board by the Governor; provided that, any such officer may resign at any time and qualified. The duties of each officer shall be prescribed in the rules of the Board.~~

B. The Board may hold such regularly scheduled meetings, special meetings, emergency meetings, or continued or reconvened meetings as found by the Board to be expedient or necessary. The president, and in his or her absence the vice-president, shall preside at all meetings. A majority of the Board shall constitute a quorum and have power to act for the transaction of business.

C. The Board shall act in accordance with the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open Records Act, and the Administrative Procedures Act.

D. All members of the Board and such employees as determined by the Board shall be bonded as required by Sections 85.26 through 85.31 of Title 74 of the Oklahoma Statutes.

E. The responsibilities and rights of any member or employee of the Board who acts within the scope of Board duties or employment shall be governed by the Governmental Tort Claims Act.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 147, as amended by Section 11, Chapter 150, O.S.L. 1993 (59 O.S. Supp. 1996, Section 147), is amended to read as follows:

Section 147. A. The Board of Podiatric Medical Examiners is authorized, after notice and opportunity for a hearing, pursuant to Article II of the Administrative Procedures Act, to issue an order ~~suspending,~~ imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a podiatric physician has committed any of the acts or occurrences set forth in Section 148 of this title:

1. Disapproval of an application for a renewal license;

2. Suspension of a license issued by the Board for a maximum period ~~not exceeding~~ of three (3) years, ~~any;~~

3. Revocation of a license ~~to practice podiatric medicine heretofore issued and remaining effective under the provisions of this act or hereafter issued under the applicable laws for any one or more of the grounds or causes provided for revocation of such a license, as specified in Section 148 of this title~~ issued by the Board;

4. An administrative fine not to exceed One Thousand Dollars (\$1,000.00) for each count or separate violation;

5. A censure or reprimand;

6. Placement on probation for a period of time and under such terms and conditions as deemed appropriate by the Board;

7. Restriction of the practice of a podiatric physician under such terms and conditions as deemed appropriate by the Board; and

8. Payment of costs associated with a disciplinary proceeding.

B. The Board may, by rule, establish guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include:

1. Minimum and maximum administrative fines;

2. Periods of suspension, probation or supervision;

3. Terms and conditions of probation; and

4. Terms and conditions for the reinstatement of a license.

C. The Board is authorized to issue a confidential letter of concern to a podiatric physician when, though evidence does not warrant initiation of an individual proceeding, the Board has noted indications of possible errant conduct by the podiatric physician that could lead to serious consequences and formal action by the Board.

D. A podiatric physician against whom a penalty is imposed by an order of the Board pursuant to the provisions of this section shall have the right to seek a judicial review of such order pursuant to Article II of the Administrative Procedures Act.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 148, as amended by Section 12, Chapter 150, O.S.L. 1993 (59 O.S. Supp. 1996, Section 148), is amended to read as follows:

Section 148. A. The following acts or occurrences by a podiatric physician shall constitute grounds for which the penalties specified in Section 147 of this title may be imposed by order of the Board of Podiatric Medical Examiners ~~is authorized, after notice and opportunity for a hearing, pursuant to Article II of the Administrative Procedures Act, to issue an order revoking any license to practice podiatric medicine heretofore issued and remaining effective under the provisions of this act or hereafter issued under the applicable laws for any one or more of the following causes:~~

1. ~~The willful and fraudulent~~ Willfully making ~~by the licensee to the Board of any~~ a false and material statement to the Board, either before or after the issuance of ~~the~~ a license;

2. ~~Final conviction of the licensee in any court of any crime Pleading guilty or nolo contendere to, or being convicted of, a~~ felony, a misdemeanor involving moral turpitude, or of any felony a violation of federal or state controlled dangerous substances laws;

3. ~~The use by the licensee of~~ Using alcohol, any stimulant, any drug, or any other substance which ~~impairs intellect, judgment, or physical ability to such an extent as to incapacitate~~ impairs the licensee to ~~such~~ a degree that ~~he~~ the licensee is

unable to ~~perform his professional duties~~ practice podiatric medicine with safety and benefit to the public;

4. ~~Mental or physical weakness or inability which incapacitates the licensee~~ Being mentally or physically incapacitated to such a degree that ~~he~~ the licensee is unable to ~~perform his professional duties~~ practice podiatric medicine with safety and benefit to the public;

5. ~~Any advertising~~ Making any advertisement, statement, or representation ~~made by the licensee,~~ which is untrue or improbable and calculated by the licensee to deceive, defraud or mislead the public or patients, ~~actual or prospective, or to mislead both;~~

6. Practicing fraud by omission or commission ~~by the licensee~~ in the examination given by the Board, or in obtaining a license, or in obtaining renewal or reinstatement of a license;

7. ~~Failure or neglect by the licensee~~ Failing to pay or cause to be paid promptly when due any license fee ~~or renewal fee~~ required by the ~~applicable laws~~ Podiatric Medicine Practice Act or the rules of the Board, ~~as the case may be;~~

8. ~~Willful failure or neglect by the licensee to employ antiseptic methods in his practice, or to do reasonable sterilizing as needed for protecting the patient~~ Practicing podiatric medicine in an unsafe or unsanitary manner or place;

9. Performing, or attempting to perform, any surgery ~~as to~~ for which ~~he~~ the licensee has not had reasonable training;

10. Gross and willful neglect of duty as a member or officer of the Board;

11. ~~Any act or omission by the licensee made unlawful by the applicable laws, regardless of whether the licensee shall have been convicted thereof in any court;~~

~~12. Final conviction of the licensee in any court of any violation of the applicable laws;~~

~~13. Advertising, or representing in any other way, by the licensee which is grossly untrue or improbable;~~

~~14. Grossly dishonorable conduct on the part of the licensee;~~

15. ~~Dividing by the licensee with any other person or with any partnership, association, trust, firm, corporation, or firm,~~

~~in any proportion, of other legal entity any fee, gift, or other compensation, or other award for services as a podiatric physician, except with:~~

- ~~a. another licensed podiatric physician or with,~~
- ~~b. an applicant for a license who is observing or assisting the licensee as an intern, preceptee or resident, as authorized by the rules of the Board, or ~~with~~~~
- ~~c. a practitioner of a another branch of the healing art arts who is duly licensed under the laws of this state or ~~some other~~ another state ~~or,~~ district or territory ~~under the jurisdiction~~ of the United States ~~of America,~~~~

~~who has actually ~~shares in the service or in the responsibility attending the service provided services, directly or indirectly,~~ to the patient from or for whom the fee or other compensation is received, or at the time of the ~~service~~ services is an active associate of the licensee in the lawful practice of podiatric medicine in this state; and~~

~~16. Any act or omission on the part of the licensee which is contrary to or in derogation of 12. Violating or attempting to violate the provisions of the Podiatric Medicine Practice Act, the Code of Ethics; and~~

~~17. Any willful violation of, or the rules of the Board.~~

~~B. Proof before the Board to its satisfaction of commitment under the laws of this or any other such state, district, or territory of a licensee to any Commitment of a licensee to an institution for the ~~insane or feeble-minded,~~ mentally ill shall constitute prima facie ~~proof to the Board of mental weakness or inability which incapacitates~~ evidence that the licensee is mentally incapacitated to ~~such~~ a degree that ~~he~~ the licensee is unable to ~~perform his professional duties~~ practice podiatric medicine with safety and benefit to the public.~~

SECTION 4. AMENDATORY 59 O.S. 1991, Section 149, is amended to read as follows:

~~Section 149. Charge or charges for suspension or revocation of license shall be in writing and filed with the secretary-treasurer A. Any person may file a written and signed complaint with the Board of Podiatric Medical Examiners, alleging that a podiatric physician has violated the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board, and may be made by anyone; and no license shall be suspended or revoked until (1) a copy of the charge or charges, shall have been sent to the licensee by registered mail to the last post office address of the licensee appearing upon the license record of the Board or delivered to the licensee in person, and (2) the licensee is notified in similar way of the time and place when and where the Board will commence its hearing of the charge or charges, and (3) the Board publicly hears the charge or charges and allows the licensee reasonable opportunity to appear in person or by counsel or in both such ways and to present evidence in refutation of the charge or charges. Such notice shall be issued by any member of the Board and shall be so given to the licensee at least twenty (20) days before commencement of the hearing. Whether or not the licensee appears, the Board may proceed and determine the truthfulness or untruthfulness of the charge or charges; and if, upon such hearing, the Board shall determine the charge or charges to be true wholly or in substantial part, and if under the applicable laws the license may, and in the opinion of the Board should, be suspended or revoked upon the evidence adduced, the Board shall determine which, and if the determination be for suspension shall determine also the duration of the suspension, and as it determines, the Board by its written order shall revoke the license or suspend it for a specified time, not to exceed three (3) years, or adjudge that the evidence presented upon the hearing is insufficient to justify suspension or revocation. If the Board shall determine that the charge or charges themselves if true are insufficient to justify suspension or revocation, it shall so order and withhold further proceeding thereon except to dismiss the same. The Board may continue the hearing from time to time as~~

~~it determines. Suspension shall, during the period of the suspension, and revocation shall, permanently, take from the licensee all rights and privileges acquired by the license the facts upon which the allegations are based. Each complaint received by the Board shall be investigated in a manner to be prescribed in the rules of the Board.~~

SECTION 5. AMENDATORY 59 O.S. 1991, Section 155, is amended to read as follows:

Section 155. ~~Said~~ The Board is hereby authorized to hold and conduct of Podiatric Medical Examiners shall:

1. Conduct investigations and hearings and determine any charge or charges for revocation or suspension of any license issued by said of complaints against podiatric physicians filed with the Board, pursuant to Section 149 of this title; and ~~for~~

2. Initiate and conduct individual proceedings, pursuant to Article II of the Administrative Procedures Act, against podiatric physicians alleged to have violated the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board. For such purposes said the Board, or any member thereof, is hereby empowered to issue subpoenas, compel the attendance of witnesses, and administer oaths and affirmations. Subpoenas authorized by this ~~act~~ section may be signed and issued by any member of ~~said~~ the Board, and shall be served, and return of service thereof made, in the same manner as a subpoena is served ~~out of~~ from a court of record in this state and as return of service in such case is made. ~~If a~~ Any person ~~fails~~ failing and ~~refuses~~ refusing to attend in obedience to such subpoena, or ~~refuses~~ refusing to be sworn or examined or answer any question propounded by any member of ~~said~~ the Board or any attorney or licensee upon permission from ~~said~~ the Board, ~~such person upon conviction thereof,~~ shall be guilty of a misdemeanor and punishable as such, ~~upon conviction.~~ All resolutions, findings, decisions and orders of said Board, and minutes of all its meetings, shall be reduced to writing and recorded in a record to be kept by the secretary-treasurer of said Board for that purpose. ~~Said secretary-treasurer shall keep~~

~~complete records of all monies received by him as secretary-treasurer.~~

SECTION 6. AMENDATORY 59 O.S. 1991, Section 731.5, is amended to read as follows:

Section 731.5 Nothing in this act shall apply to ~~any~~:

1. Any commissioned officer in any of the healing arts licensed as such in the United States Army, Navy, ~~Marine Marines,~~ U.S. Public Health Service, or Marine ~~hospital service~~ Hospital Service, in the discharge of his professional duties, ~~or to any;~~

2. Any legally-qualified person when engaged exclusively in the practice of his particular profession, as defined by law, ~~or to any;~~

3. Any licensed person practicing any of the healing arts from another state, or territory, when in actual consultation with a licensed practitioner in this state; ~~nor shall it prevent any~~

4. Any physician's trained assistant who is assisting a licensed physician to render services within the licensed scope of practice of the physician, if the assistant is under the supervision and control of the physician;

5. Any student in any recognized school of the healing arts in carrying out prescribed courses of study provided such school is a recognized institution by the statutes of Oklahoma, and its practitioners are duly licensed as prescribed by law, ~~nor shall this act be construed in any way to interfere with the;~~

6. The practice of those who endeavor to prevent, or cure, disease or suffering, by spiritual means or prayer; ~~nor shall this act be construed to interfere in any way with a or~~

7. Any qualified psychologist in the discharge of his professional duties, so long as he is employed by any state or governmental agency, or any recognized college or university.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 637.1, as amended by Section 18, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 1996, Section 637.1), is amended to read as follows:

Section 637.1 A. In addition or as an alternative, as the case may be, to revoking, conditioning, suspending, reinstating or

refusing to renew any license, the State Board of Osteopathic Examiners may, after affording opportunity to be heard:

1. Temporarily order suspension or limitation of license;
2. Issue an order of warning, reprimand or censure with regard to any act, conduct or practice which, in the judgment of the Board upon consideration of all relevant facts and circumstances, does not warrant the initiation of formal action;
3. Order that any person violating any provision of an act or regulation administered by the Board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the Board;
4. Order any person as a condition for continued, reinstated or renewed licensure or as a condition for probation or suspension to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions; or
5. Order any person as a condition of any suspension or probation or any disciplinary action, to 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 person so ordered.

B. If after considering all the testimony presented, the State Board of Osteopathic Examiners finds that the respondent has violated any provision of the Oklahoma Osteopathic Medicine Act or any rule promulgated thereto, the Board may impose on the respondent as a condition of any suspension, revocation, or probation, or any other disciplinary action, the payment of costs expended by the Board in investigating and prosecuting said cause, such costs to include but not be limited to staff time, salary and travel expense, witness fees and attorney fees. In addition, the Board may impose an administrative fine in an amount not to exceed One Thousand Dollars (\$1,000.00) for each count or separate violation.

C. The Secretary of the Board may issue a letter of concern to a licensee, without a hearing, when evidence does not warrant formal proceedings, but indications exist of possible errant conduct that could lead to serious consequences and formal action. The letter of concern may contain, at the Secretary's discretion, clarifying information from the licensee. Such letters of concern are considered remedial.

SECTION 8. REPEALER 59 O.S. 1991, Section 150, is hereby repealed.

SECTION 9. This act shall become effective November 1, 1997.

46-1-7494 KSM