

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3259

By: Kirby

AS INTRODUCED

An Act relating to professions and occupations;

amending 59 O.S. 1991, Section 725.2, as amended by Section 1, Chapter 168, O.S.L. 1993 (59 O.S. Supp. 1997, Section 725.2), which relates to the healing arts; amending 59 O.S. 1991, Section 738.1, as amended by Section 4, Chapter 207, O.S.L. 1995 (59 O.S. Supp. 1997, Section 738.1), which relates to the Board of Podiatric Medical Examiners; amending 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 and as last amended by Section 52, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 1250.5), which relates to unfair claim settlement practices; amending 36 O.S. 1991, Section 3634, as amended by Section 1, Chapter 26, O.S.L. 1993 (36 O.S. Supp. 1997, Section 3634), which relates to procedure for individuals who may perform medical or surgical services or procedures; amending 36 O.S. 1991, Section 6054, as last amended by Section 1, Chapter 76, O.S.L. 1996 (36 O.S. Supp. 1997, Section 6054), which relates to the Health Care Freedom of Choice Act; amending 47 O.S. 1991, Section 15-112, as last amended by Section 1, Chapter 94, O.S.L. 1997 (47 O.S. Supp. 1997, Section 15-112), which relates to

certain disabled placards; amending 59 O.S. 1991, Section 353.1, as last amended by Section 1, Chapter 186, O.S.L. 1996 (59 O.S. Supp. 1997, Section 353.1), which relates to the Oklahoma Pharmacy Act; amending 59 O.S., Section 355, as amended by Section 4, Chapter 250, O.S.L. 1997 (59 O.S. Supp. 1997, Section 355), which relates to dangerous drugs; amending 63 O.S. 1991, Section 2601, which relates to consent of minors; amending 63 O.S. 1991, Section 1-707a, as amended by Section 1, Chapter 134, O.S.L. 1995 (63 O.S. Supp. 1997, Section 1-707a), which relates to hospitals; amending 68 O.S. 1991, Section 1357.6, which relates to tax exceptions; and amending 85 O.S. 1991, Section 14, as last amended by Section 6, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 1997, Section 14), which relates to Workers' Compensation; including homeopathic physicians and surgeons within persons which are included within scope of sections; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3001 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 19 of this act shall be known and may be cited as the "Oklahoma Homeopathic Physicians and Surgeons Act".

B. The practice of homeopathic medicine and surgery is a privilege granted through the Oklahoma Homeopathic Physicians and

Surgeons Act by the State Board of Homeopathic Physicians and Surgeons.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Homeopathic Physicians and Surgeons Act:

1. "Homeopathic medicine and surgery" is defined as a system of healing which utilizes generally accepted physical, pharmacological and surgical methods of diagnosis and therapy while placing strong emphasis on the importance of body mechanics and manipulative methods to detect and correct faulty structure and function; and

2. "Surgery" means the use of electrical and other methods for the surgical repair and care incident thereto of tears, evulsions or cuts situated in the cutaneous and subcutaneous structures including the "tela subcutanes" of the human body, including anal and oral tissue; or to remove by surgical means any nonmalignant tumors or pathological states such as foreign bodies or traumatic discontinuity causing loss of function of these same structures, and to utilize any substance that will inhibit the growth and development of microorganisms that might have connection with the before mentioned pathological states and to administer localized anesthetic in connection therewith. In order to perform all other types of surgery, a chiropractic physician and surgeon shall acquire residency training and certification equivalent to an American Osteopathic Association or American Medical Association residency approved surgical training program. Said training, when completed, shall be subject to approval and certification by the State Board of Homeopathic Physicians and Surgeons and the Council on Accreditation of the American Physicians and Surgeons Association respectively.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3003 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. On and after January 1, 1999, except as otherwise provided by this section, it shall be unlawful for any person to practice as a homeopathic medical physician and surgeon in this state, without a license to do so, issued by the State Board of Homeopathic Physicians and Surgeons; provided, that any license or certificate heretofore issued under the laws of this state, authorizing its holder to practice homeopathic medicine and surgery, shall remain in full force and effect.

B. 1. On and after January 1, 1999, a person within or outside of this state who performs through electronic communications diagnostic or treatment services within the scope of practice of a homeopathic medical physician and surgeon for any patient whose condition is being diagnosed or treated within this state shall be licensed in this state, pursuant to the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act. However, in such cases, a nonresident homeopathic medical physician who, while located outside this state, consults on an irregular basis with a physician who is located in this state is not required to be licensed in this state.

2. A person who performs any of the functions covered by this subsection submits themselves to the jurisdiction of the courts of this state for the purposes of any cause of action resulting from the functions performed.

C. A hospital or related institution, as such terms are defined in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the principal purpose or function of providing hospital or medical care, including but not limited to any corporation, association, trust, or other organization organized and operated for such purpose, may employ one or more persons who are duly licensed to practice homeopathic medicine and surgery in this state without being regarded as itself practicing homeopathic medicine within the meaning and provisions of this section. The employment by the hospital or related institution of any person who is duly licensed

shall not, in and of itself, be considered as an act of unprofessional conduct by the person so employed. Nothing provided herein shall eliminate, limit or restrict the liability for any act or failure to act of any hospital, any hospital's employees or persons duly licensed to practice homeopathic medicine and surgery.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3004 of Title 59, unless there is created a duplication in numbering, reads as follows:

The practice of medicine and surgery by persons authorized under other licensing laws of this state shall in no way be affected by the provision of the Oklahoma Homeopathic Physicians and Surgeons Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3005 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the State Board of Homeopathic Physicians and Surgeons to continue until July 1, 2004, in accordance with the provisions of the Oklahoma Sunset Law.

B. 1. The State Board of Homeopathic Physicians and Surgeons shall consist of three (3) members appointed by the governor, who hold the degree of Doctor of Homeopathic Medicine prior to their appointment. The members shall be appointed by the Governor from a list of not less than six names submitted to the Governor by the Oklahoma Homeopathic Physicians and Surgeons Association.

2. All initial appointments made to the Board shall be for terms of seven (7) years.

3. Subsequent appointments to the Board shall be for a term of five (5) years. In the year 2005, the Board may be expanded to a total of nine (9) members appointed by the Governor.

4. In the event of a vacancy brought about for any reason, the post so vacated shall be filled from a list of not less than six

names submitted by the Oklahoma Homeopathic Physicians and Surgeons Association.

C. The Board shall have and use a common seal, and make and adopt all necessary rules and bylaws relating to the enforcement of the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act.

D. Examinations may be held at the discretion of the Board, at the time and place fixed by the Board, and all applicants shall be notified in writing.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3006 of Title 59, unless there is created a duplication in numbering, reads as follows:

Each member of the State Board of Homeopathic Physicians and Surgeons shall, before entering upon the duties of the office, take the oath of office prescribed by the Oklahoma Constitution before someone qualified to administer oaths, and shall make oath that the member is a legally qualified practitioner of homeopathic medicine and surgery in this state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3007 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. The State Board of Homeopathic Physicians and Surgeons shall, immediately after the members have qualified, elect a president, vice-president and secretary-treasurer.

2. The president of said Board shall preside at all meetings of the Board and perform such other duties as the Board by its rule may prescribe.

3. The vice-president shall perform all the duties of the president, during the president's absence or disability.

4. The secretary-treasurer shall keep a record of all proceedings of the Board and perform such other duties as are prescribed in the Oklahoma Homeopathic Physicians and Surgeons Act,

or which may be prescribed by said Board. It shall be the duty of the secretary-treasurer to receive and care for all monies coming into the hands of said Board, and to pay out the same upon orders of the Board.

B. 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.

C. The Board may expend such funds as are necessary in implementing the duties of the Board. The Board may hire:

1. All necessary administrative, clerical and stenographic assistance as the Board shall deem necessary at a salary to be fixed by the Board;

2. An attorney, on a case-by-case basis, to represent the Board in legal matters and to assist authorized state and county officers in prosecuting or restraining violations of the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act. The Board shall fix the compensation of said attorney; and

3. One or more investigators as may be necessary to implement the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act at an annual salary to be fixed by the Board, and may authorize necessary expenses. In addition, the investigators may investigate and inspect the nonfinancial business records of all persons licensed pursuant to the Oklahoma Homeopathic Physicians and Surgeons Act in order to determine whether or not licensees are in compliance with the Oklahoma Homeopathic Physicians and Surgeons Act and the Uniform Controlled Dangerous Substances Act or any other law, rule of the State of Oklahoma or any federal law or rule affecting the practice of homeopathic medicine.

D. Any licensee or applicant for license subject to the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act shall be deemed to have given consent to any duly authorized employee or agent of the Board to access, enter, or inspect the

records or facilities of such license or applicant subject to the Oklahoma Homeopathic Physicians and Surgeons Act. Refusal to allow such access, entry or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a license. Upon refusal of such access, entry, or inspection, pursuant to this section, the Board or a duly authorized representative may make application for and obtain a search warrant from the district court of the county where the facility or records are located to allow such access, entry, or inspection.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3008 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Homeopathic Physicians and Surgeons shall preserve a record of its proceedings in a book for the purpose, which shall be open to public inspection at all reasonable times, showing:

1. The name, age, place and duration of residence of each applicant;

2. The time spent in the study of homeopathic medicine and surgery;

3. The year and school from which degrees were granted;

4. Its proceeding relative to the issuance, refusal, renewal, suspension, or revocation of licenses applied for, and issued pursuant to the Oklahoma Homeopathic Physicians and Surgeons Act; and

5. The name, known place of business and residence, and the date and number of license of each registered homeopathic physician and surgeon.

The register shall be prima facie evidence of all matters contained therein.

B. The secretary of said Board shall on March 1 of each year submit an official copy of said register to the Oklahoma Secretary

of State for permanent record. A certified copy of said register, or any part thereof, with the hand and seal of the secretary of said State Board of Homeopathic Physicians and Surgeons, or the Secretary of State, shall be admitted in evidence in all courts of this state.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3009 of Title 59, unless there is created a duplication in numbering, reads as follows:

Each applicant for the examination provided in the Oklahoma Homeopathic Physicians and Surgeons Act shall comply with the following requirements:

1. Make application for examination on blank forms prepared and furnished by the State Board of Homeopathic Physicians and Surgeons;

2. Submit evidence, verified on oath and satisfactory to the Board, that the applicant is twenty-one (21) years of age or over, and has the preliminary and professional education required by the Oklahoma Homeopathic Physicians and Surgeons Act; and

3. Pay in advance to the Board the fees as determined by the State Board of Homeopathic Physicians and Surgeons to be sufficient to cover the cost and expense incurred by the Board for processing such application for:

a. examination of a homeopathic medical physician and surgeon, and

b. the license to one applying therefor under the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3010 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The standards of preliminary education deemed requisite for admission to a school or college of homeopathic medicine and surgery in good standing are that an applicant shall have completed the

admission requirements of a school of homeopathic medicine and surgery.

B. To practice as a homeopathic physician and surgeon, the applicant shall be a graduate of a duly accredited school or college which confers the Doctor of Homeopathic Medicine (DHM) degree.

C. The term "school or college of homeopathic medicine and surgery" shall mean a legally accredited school or college of homeopathic medicine and surgery requiring:

1. For admission to its courses of study, a preliminary education equal to the requirements established by it; and

2. For granting the Doctor of Homeopathic Medicine (DHM) degree, actual attendance at such school or college of homeopathic medicine and surgery and demonstration of successful completion of the curriculum and recommendation for graduation.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3011 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Each applicant who successfully passes the examination and has met other requirements for licensure shall be issued a license to practice as a homeopathic physician and surgeon.

B. The State Board of Homeopathic Physicians and Surgeons may issue a license without examination to a practitioner who is currently licensed in any country, state, territory or province upon the following conditions:

1. That the applicant is of good moral character;

2. That the requirements of registration in the country, state, territory or province in which the applicant is licensed are deemed by the Board to have been equivalent to the requirements of registration in force in this state at the date of such license;

3. That the applicant has no disciplinary matters pending against the applicant in any country, state, territory or province; and

4. That the license being reciprocated must have been obtained by an examination in that country, state, territory or province deemed by the Board to be equivalent to that used by the Board.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3012 of Title 59, unless there is created a duplication in numbering, reads as follows:

On and after January 1, 1999, homeopathic physicians and surgeons shall observe and be subject to all state and municipal regulations relative to reporting all births and deaths, and all matters pertaining to the public health, with equal rights and obligations as physicians of other schools of medicine, and such reports shall be accepted by the officers of the department to which such reports are made.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3013 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Homeopathic Physicians and Surgeons 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 a homeopathic physician and surgeon, 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 homeopathic 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,
- 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 Homeopathic Physicians and Surgeons 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

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,

- h. engaging in any sexual activity within the 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 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 the 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 has entered a plea of guilty or nolo contendere in a criminal prosecution, for any offense reasonably related to the qualifications, functions or duties of a homeopathic physician and surgeon, or for any offense involving moral turpitude, 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 homeopathic 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 a homeopathic physician and surgeon in a manner consistent with the public 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 such person's own name;

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, molestation and other acts of moral turpitude; or

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

B. The State Board of Homeopathic Physicians and Surgeons 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 the person 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 Homeopathic Physicians and Surgeons 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 president of said Board shall have the authority to compel the giving of testimony as is conferred on courts of justice.

D. Any homeopathic physician and surgeon in the State of Oklahoma whose license to practice is revoked or suspended under paragraphs 1 through 14 of subsection A of 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 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3014 of Title 59, unless there is created a duplication in numbering, reads as follows:

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 Homeopathic Physicians and Surgeons may, after affording opportunity to be heard:

1. Temporarily order suspension or limitation of license;

2. Issue an order or 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 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 Board finds that the respondent has violated any provision of the Oklahoma Homeopathic Physicians and Surgeons Act or any rule promulgated thereto, it 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.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3015 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. On and after January 1, 1999, 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 homeopathic medicine and surgery or attempt to practice homeopathic medicine and surgery without a license issued by the State Board of Homeopathic Physicians and Surgeons; and each visit, treatment or prescription, or attempted visit, treatment or prescription, shall constitute a separate and distinct offense;

2. Obtaining, or attempting to obtain, a license under the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act, or obtaining, or attempting to obtain, money or any other thing of value by fraudulent representation or false pretense;

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

4. Allowing any person in the licensee's employment or control to practice as a homeopathic physician and surgeon when not actually licensed to do so.

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

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3016 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. On or before July 1 of every other year, all persons legally licensed to practice homeopathic medicine and surgery in this state shall apply to the secretary-treasurer of the State Board of Homeopathic Physicians and Surgeons, on forms furnished thereby, for a renewal certificate of registration entitling such licensee to practice homeopathic medicine and surgery in Oklahoma during the next ensuing fiscal year.

B. Each such application shall be accompanied by a renewal fee in an amount sufficient to cover the cost and expense incurred by the Board for a renewal of such person's certificate to practice homeopathic medicine and surgery.

C. In addition to the payment of a renewal fee every two (2) years, each licensee so applying for a renewal of a certificate shall furnish to the Board proof that such person has attended at least twenty (20) days in a two-year period of the educational program conducted by the Oklahoma Homeopathic Physicians and Surgeons Association, or its equivalent, as determined by the Board, in the fiscal years preceding such application for a renewal; provided, that the Board may excuse the failure of said licensee to attend said educational program in the case of illness or other unavoidable casualty rendering it impossible for said licensee to have attended the educational program.

D. The secretary of said Board shall send a written notice to every person holding a legal certificate to practice homeopathic medicine and surgery in this state, at least thirty (30) days prior to July 1 of every other year, directed to the last-known address of said licensee, notifying said licensee that it will be necessary for such licensee to pay said renewal license fee as herein provided, and proper forms shall accompany said notice upon which said licensee shall make application for renewal of the certificate as herein provided for.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3017 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. If any licensee shall fail to comply with the licensing requirements of the Oklahoma Homeopathic Physicians and Surgeons Act and such license is allowed to lapse, the licensee shall, upon order of the State Board of Homeopathic Physicians and Surgeons, forfeit the right to practice homeopathic medicine in this state, and the license and certificate shall be canceled; provided, however, that the Board may reinstate such person upon the payment of all fees due, plus a penalty fee in the amount fixed by the State Board of Homeopathic Physicians and Surgeons not to exceed twice the amount of the license renewal fees as determined by the Board, and upon the presentation of satisfactory evidence of the attendance at an educational program as otherwise provided for in the Oklahoma Homeopathic Physicians and Surgeons Act. The State Board of Homeopathic Physicians and Surgeons shall not place the license of any person authorized to practice homeopathic medicine and surgery in this state on inactive status.

B. Licensees who retire from such practice or desire to request cancellation of their license shall file with the Board an affidavit, on a form to be furnished by the Board, which states the date of retirement and such other facts to verify the retirement or other reasons for cancellation as the Board may deem necessary, and the license shall be canceled. If a licensee desires to reengage the practice, the licensee shall reinstate the license as provided for in the Oklahoma Homeopathic Physicians and Surgeons Act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3018 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The funds received pursuant to the Oklahoma Homeopathic Physicians and Surgeons Act shall be deposited to the credit of the

State Board of Homeopathic Physicians and Surgeons Revolving Fund, and may be expended by the State Board of Homeopathic Physicians and Surgeons, and under its direction, in assisting in the enforcement of the laws of this state prohibiting the unlawful practice of homeopathic medicine and surgery, and for the dissemination of information to prevent the violation of such laws, and for the purchasing of supplies and such other expense as is necessary to properly carry out the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act.

B. There is hereby created in the State Treasury a revolving fund for the Board, to be designated the "State Board of Homeopathic Physicians and Surgeons Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Board pursuant to the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Board for the purpose of enforcing the laws and for the purchase of supplies and such other expense as is necessary to properly implement the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims signed by an authorized employee or employees of the Board and filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3019 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Board shall promulgate such rules as may be necessary to implement the provisions of the Oklahoma Homeopathic Physicians and Surgeons Act, and may establish fees authorized but not specified in the Oklahoma Homeopathic Physicians and Surgeons Act.

SECTION 20. AMENDATORY 59 O.S. 1991, Section 725.2, as amended by Section 1, Chapter 168, O.S.L. 1993 (59 O.S. Supp. 1997, Section 725.2), is amended to read as follows:

Section 725.2 A. The following ~~seven~~ eight classes of persons may use the word "Doctor", or an abbreviation thereof, and shall have the right to use, whether or not in conjunction with the word "Doctor", or any abbreviation thereof, the following designations:

1. The letters "D.P.M." by a person licensed to practice podiatry under Chapter 4 of this title;

2. The letters "D.C." by a person licensed to practice homeopathic under Chapter 5 of this title;

3. The letters "D.D.S." by a person licensed to practice dentistry under Chapter 7 of this title;

4. The letters "M.D." by a person licensed to practice medicine and surgery under Chapter 11 of this title;

5. The letters "O.D." by a person licensed to practice optometry under Chapter 13 of this title; ~~and~~

6. The letters "D.O." by a person licensed to practice osteopathy under Chapter 14 of this title; ~~and~~

7. The letters "H.M.D.", by a person licensed to practice chiropractic medicine by the State Board of Homeopathic Physicians and Surgeons on and after January 1, 1999; and

8. The letters PhD., EdD. or PsyD. by a person licensed as a health service psychologist pursuant to the Psychologists Licensing Act.

B. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "doctor" or "doctors" shall mean and include each of the ~~seven~~ eight classes of persons listed in subsection A of this section.

C. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "physician" or "physicians" shall mean and include each of the classes of persons

listed in paragraphs 1 through ~~6~~ 7 of subsection A of this section. The term "physician" shall not include a person who is licensed as a health service psychologist pursuant to the Psychologists Licensing Act unless such person is otherwise authorized to use such designation pursuant to this section.

SECTION 21. AMENDATORY 59 O.S. 1991, Section 738.1, as amended by Section 4, Chapter 207, O.S.L. 1995 (59 O.S. Supp. 1997, Section 738.1), is amended to read as follows:

Section 738.1 Injunctions, without bond, may be granted by district courts to the Board of Podiatric Medical Examiners, the Board of Homeopathic Examiners, the State Board of Medical Licensure and Supervision, the Board of Examiners in Optometry, the Board of Pharmacy, the State Board of Homeopathic Physicians and Surgeons, or the State Board of Osteopathic Examiners, for the purpose of enforcing the respective acts and laws creating and establishing these boards.

SECTION 22. AMENDATORY 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 and as last amended by Section 52, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 1250.5), is amended to read as follows:

Section 1250.5 Any of the following acts by an insurer, if committed in violation of Section 1250.3 of this title, constitutes an unfair claim settlement practice:

1. Failing to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim;
2. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
3. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its insurance policies or insurance contracts;

4. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

5. Failing to comply with the provisions of Section 1219 of this title;

6. Denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so;

7. Except where there is a time limit specified in the policy, making statements, written or otherwise, which require a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights;

8. Requesting a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

9. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

10. Denying payment to a claimant on the grounds that services, procedures, or supplies provided by a treating physician or a hospital were not medically necessary unless the health insurer or administrator, as defined in Section 1442 of this title, first obtains an opinion from any provider of health care licensed by law and preceded by a medical examination or claim review, to the effect that the services, procedures or supplies for which payment is being denied were not medically necessary. Upon written request of a claimant, treating physician, or hospital, such opinion shall be set forth in a written report, prepared and signed by the reviewing physician. The report shall detail which specific services, procedures, or supplies were not medically necessary, in the opinion of the reviewing physician, and an explanation of that conclusion. A copy of each report of a reviewing physician shall be mailed by

the health insurer, or administrator, postage prepaid, to the claimant, treating physician or hospital requesting same within fifteen (15) days after receipt of such written request. As used in this paragraph, "physician" means a person holding a valid license to practice medicine and surgery, osteopathic medicine, homeopathic medicine and surgery, podiatric medicine, dentistry, homeopathic, or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes;

11. Compensating a reviewing physician, as defined in paragraph 10 of this ~~subsection~~ section, on the basis of a percentage of the amount by which a claim is reduced for payment;

12. Compelling, without just cause, policyholders to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered; or

13. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last financial examination conducted or accepted by the Commissioner, whichever time is longer. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance.

SECTION 23. AMENDATORY 36 O.S. 1991, Section 3634, as amended by Section 1, Chapter 26, O.S.L. 1993 (36 O.S. Supp. 1997, Section 3634), is amended to read as follows:

Section 3634. Medical or surgical services or procedures constituting the practice of podiatric medicine, as defined by Section 142 of Title 59 of the Oklahoma Statutes, psychological

services or procedures constituting the practice of psychology, as defined by Section 1352 of Title 59 of the Oklahoma Statutes, medical or surgical services or procedures constituting the practice of homeopathic medicine and surgery, as defined by the Oklahoma Homeopathic Physicians and Surgeons Act, and licensed and certified clinical social work services provided by persons meeting the qualifications required under subsection B of Section 1261.1 of Title 59 of the Oklahoma Statutes and covered by the terms of any individual, group, blanket or franchise policy, agreement or service contract providing accident or health benefits coverage in Oklahoma issued by any insurer, whether a stock or mutual insurance company, a medical service corporation or association, or any other type of issuer whatever, and covering an Oklahoma risk may be performed by any practitioner licensed to do so under Sections 136 through 160.2~~7~~ or Sections 1351 through 1376 of Title 59 of the Oklahoma Statutes, Sections 1 through 19 of this act, or subsection B of Section 1261.1 of Title 59 of the Oklahoma Statutes, who is selected by the insured provided that where covered benefits are offered through a contracting preferred provider organization, the homeopathic physician and surgeon, podiatrist, psychologist, or clinical social worker is a contracting provider. Except in the case of a contracting preferred provider organization, any provision, exclusion or limitation in such a policy denying an insured the free choice of such licensed podiatric physician, homeopathic physician and surgeon, psychologist or certified clinical social worker shall, to the extent of the denial, be void, but such voidance shall not affect the validity of the other provisions of the policy.

SECTION 24. AMENDATORY 36 O.S. 1991, Section 6054, as last amended by Section 1, Chapter 76, O.S.L. 1996 (36 O.S. Supp. 1997, Section 6054), is amended to read as follows:

Section 6054. As used in the Health Care Freedom of Choice Act:

1. "Accident and health insurance policy" or "policy" means any policy, certificate, contract, agreement or other instrument that provides accident and health insurance, as defined in Section 703 of this title, to any person in this state;

2. "Hospital" means any facility as defined in Section 1-701 of Title 63 of the Oklahoma Statutes;

3. "Insured" means any person entitled to reimbursement for expenses of health care services and procedures under an accident and health insurance policy issued by an insurer;

4. "Insurer" means any entity that provides an accident and health insurance policy in this state, including but not limited to a licensed insurance company, a not-for-profit hospital service and/or medical indemnity corporation, a fraternal benefit society, a multiple employer welfare arrangement or any other entity subject to regulation by the Insurance Commissioner; and

5. "Practitioner" means any person holding a valid license to practice medicine and surgery, osteopathic medicine, homeopathic medicine and surgery, homeopathic, podiatric medicine, optometry or dentistry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes.

SECTION 25. AMENDATORY 47 O.S. 1991, Section 15-112, as last amended by Section 1, Chapter 94, O.S.L. 1997 (47 O.S. Supp. 1997, Section 15-112), is amended to read as follows:

Section 15-112. A. As used in this section:

1. "Physician" means any person holding a valid license to practice medicine and surgery, osteopathic medicine, homeopathic medicine and surgery, chiropractic, podiatric medicine, or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes; and

2. "Physical disability" means an illness, disease, injury or condition by reason of which a person:

- a. cannot walk two hundred (200) feet without stopping to rest,
- b. cannot walk without the use of or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistance device,
- c. is restricted to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest,
- d. must use portable oxygen,
- e. has functional limitations which are classified in severity as Class III or Class IV according to standards set by the American Heart Association,
- f. is severely limited in the person's ability to walk due to an arthritic, neurological or orthopedic condition, or
- g. is certified legally blind.

B. 1. The Department of Public Safety shall issue a detachable temporary placard indicating physical disability to any person who submits an application on a form furnished by the Department and certified by a physician, attesting that the applicant has a physical disability, together with the fee required in subsection D of this section. The attestation of the physician shall denote "temporary" as the type of placard requested and shall indicate an expiration date which the physician estimates to be the date of termination of such physical disability; however, if the physician certifies that the physical disability is permanent, the physician shall denote "five-year" as the type of placard requested.

2. The person to whom such placard is issued shall be entitled to the special parking privileges provided for in Section 15-111 of

this title; provided, however, the placard is properly displayed on the parked vehicle.

C. Any placard issued by the Department of Public Safety shall remain valid until:

1. The placard, if temporary, expires;

2. The person to whom the placard was issued requests a replacement placard, whether a five-year or temporary, whereupon such person shall pay to the Department the replacement fee specified in subsection D of this section; or

3. The placard, whether a five-year or temporary, is no longer needed by the person to whom such placard was issued for the disability for which the placard was originally issued, whereupon such placard shall be returned to the Department.

D. On and after July 1, 1995:

1. A five-year placard shall expire five (5) years from the last day of the month in which the placard was issued. Upon the expiration of a five-year placard, the person to whom such placard was issued may obtain a subsequent placard by reapplying to the Department, in the same manner as provided in subsection B of this section. If the physician certifying the application attests that the applicant's physical disability still exists, the physician shall so denote on the application and the expiration date shall be extended an additional five (5) years;

2. A temporary placard shall indicate the expiration date which the physician certifying the physical disability estimates to be the date of termination of such physical disability, which shall not be later than six (6) months from the date of issuance and upon which date such placard shall expire and shall be returned to the Department; provided, however, nothing in this paragraph shall be construed to prevent the holder from applying for another placard, as provided for in this section; and

3. In the event that a placard, whether a five-year or temporary, is lost or destroyed, the person to whom such placard was issued may apply in writing to the Department for a replacement placard, which the Department shall issue with the same expiration date as the original placard. The Department shall charge and the applicant shall pay to the Department a replacement fee of Two Dollars (\$2.00) for each replacement placard issued. On and after January 1, 1998, all placards issued prior to October 31, 1990, shall expire on the last day of the month in which the placard was issued, and the person to whom such placard was issued may follow the procedure provided for in subsection B of this section to obtain a second or subsequent placard.

E. A physician may sign an application certifying that a person has a physical disability, as provided in subsection B of this section, only if care and treatment of the illness, disease, injury or condition causing the physical disability of such person falls within the authorized scope of practice of the physician.

F. The Department shall recognize handicap and disability stickers issued by the Veterans Administration and federal military bases in the same manner as the placard issued by the Department as provided for in this section. For purposes of this section and other sections of law relating to the physical disability placard, the term "physical disability placard", "five-year placard" or "temporary placard" shall include those handicap and disability stickers issued by the Veterans Administration and federal military bases.

G. The Department shall have the power to formulate, adopt and promulgate rules as may be necessary to implement and administer the provisions of this section, including, but not limited to, prescribing the manner in which the five-year placard and the temporary placard are to be displayed on a motor vehicle.

H. The Commissioner of Public Safety is hereby authorized to enter into reciprocity agreements with other states for the purpose of recognizing parking placards or license plates indicating physical disability issued by those states.

SECTION 26. AMENDATORY 59 O.S. 1991, Section 353.1, as last amended by Section 1, Chapter 186, O.S.L. 1996 (59 O.S. Supp. 1997, Section 353.1), is amended to read as follows:

Section 353.1 For the purposes of the Oklahoma Pharmacy Act, ~~Section 353 et seq. of this title:~~

1. "Pharmacy" means a place regularly licensed by the Oklahoma State Board of Pharmacy in which prescriptions, drugs, medicines, chemicals and poisons are compounded or dispensed;

2. "Pharmacist" means a person registered by the Oklahoma State Board of Pharmacy to engage in the practice of pharmacy;

3. "Drugs" means all medicinal substances and preparations recognized by the United States Pharmacopoeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and internal use in the cure, diagnosis, mitigation, treatment or prevention of disease in humans and all substances and preparations, other than food, intended to affect the structure or any function of the body of a human;

4. "Medicine" means any drug or combination of drugs which has the property of curing, preventing, treating, diagnosing or mitigating diseases, or which is used for that purpose;

5. "Poison" means any substance which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes, or which destroys living tissue with which such substance comes into contact;

6. "Chemical" means any medicinal substance, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin;

7. "Prescription" means and includes any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone or other means of communication by a licensed practitioner of medicine, dentistry, osteopathy, homeopathic medicine and surgery, optometry certified by the Board of Examiners in Optometry, podiatry, or veterinary medicine, licensed by law to prescribe such drugs and medical supplies intended to be filled, compounded, or dispensed by a pharmacist;

8. "Filled prescription" means a packaged prescription medication to which a label has been affixed, which shall contain such information as is required by the Oklahoma Pharmacy Act;

9. "Nonprescription drugs" means medicines or drugs which are sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government. Such items shall also include medical and dental supplies, and bottled or nonbulk chemicals which are sold or offered for sale to the general public, if such articles or preparations meet the requirements of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A., Section 321 et seq.;

10. "Hospital" means any institution licensed by this state for the care and treatment of patients;

11. "Person" means every individual, copartnership, corporation or association, unless the context otherwise requires;

12. "Board" or "State Board" means the Oklahoma State Board of Pharmacy;

13. "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient;

14. "Dispense" includes sell, distribute, leave with, give away, dispose of, deliver, or supply;

15. "Wholesaler" or "distributor" means a person engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies, or other lawful drug outlets permitted to sell or use drugs or medicines;

16. "Dangerous drug", "legend drug" or "prescription drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) "Caution: Federal law prohibits dispensing without prescription", or (ii) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian", or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only;

17. "Manufacturer" means a person engaged in the manufacturing of drugs;

18. "Practice of pharmacy" means:

- a. the interpretation and evaluation of prescription orders,
- b. the compounding, dispensing, and labeling of drugs and devices, except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices,
- c. the participation in drug selection and drug utilization reviews,
- d. the proper and safe storage of drugs and devices and the maintenance of proper records thereof,
- e. the responsibility for advising by counseling and providing information, where professionally necessary or where regulated, of therapeutic values, content, hazards and use of drugs and devices,

- f. the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy, and
- g. the provision of those acts or services that are necessary to provide pharmaceutical care;

19. "Drug outlet" means all pharmacies, wholesalers, manufacturers, or wherever dangerous drugs are stored, and facilities which are engaged in dispensing, delivery or distribution of dangerous drugs;

20. "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, and the promotion and marketing of such drugs or devices. The term "manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons;

21. "Assistant pharmacist" means any person presently licensed as an assistant pharmacist in the State of Oklahoma by the Board pursuant to Section 353.10 of this title and for the purposes of this act shall be considered the same as a pharmacist, except where otherwise specified;

22. "Packager" means any person, firm, or corporation, except a pharmacy, who transfers dangerous drugs including but not limited to compressed medical gases from one container to another of any type;

23. "Continuing professional education" means professional, pharmaceutical education in the general areas of the socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the etiology, characteristics and therapeutics of the diseased state;

24. "Accredited program" means those seminars, classes, meetings, work projects and other educational courses approved by the Board for purposes of continuing professional education;

25. "Supervising physician" means an individual holding a current license to practice as a physician from the State Board of Medical Licensure and Supervision, ~~pursuant to the provisions of Section 481 et seq. of this title~~ the State Board of Homeopathic Physicians and Surgeons, or the State Board of Osteopathic Examiners, ~~pursuant to the provisions of Section 620 et seq. of this title~~, who supervises an advanced practice nurse as defined in Section 567.3a of this title, and who is not in training as an intern, resident, or fellow. To be eligible to supervise an advanced practice nurse, such physician shall remain in compliance with the rules promulgated by the State Board of Medical Licensure and Supervision, the State Board of Homeopathic Physicians and Surgeons, or the State Board of Osteopathic Examiners; and

26. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

- a. as the result of a practitioner's prescription drug order or initiative based on the ~~practitioner/patient/pharmacist~~ practitioner-patient-pharmacist relationship in the course of professional practice, or
- b. for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

SECTION 27. AMENDATORY 59 O.S. 1991, Section 355, as amended by Section 4, Chapter 250, O.S.L. 1997 (59 O.S. Supp. 1997, Section 355), is amended to read as follows:

Section 355. As used in Section 353.1 et seq. of this title:

1. "Dangerous drugs" means any drug intended for use by humans which, because of its toxicity or other potential for harmful effects, or the method of its use, or the collateral measures necessary for its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drugs. This shall include all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: "Caution - Federal Law prohibits dispensing without prescription";

2. "Licensed practitioner" means a medical doctor, dentist, podiatrist, osteopathic physician, veterinarian, homeopathic physician and surgeon, or optometrist licensed to practice and authorized to prescribe medication within the scope of practice of such practitioner; and

3. "Professional samples" means complimentary drugs packaged in accordance with federal and state statutes and regulations and provided to a licensed practitioner free of charge by manufacturers or distributors and distributed free of charge in such package by the licensed practitioner to such practitioner's patients.

SECTION 28. AMENDATORY 63 O.S. 1991, Section 2601, is amended to read as follows:

Section 2601. For the purposes of this act, the following words and phrases mean:

~~(a)~~ 1. "Minor" means any person under the age of eighteen (18) years of age, except such person who is on active duty with or has served in any branch of the Armed Services of the United States shall be considered an adult~~;~~;

~~(b)~~ 2. "Health professional" means for the purposes of this act any licensed physician, psychologist, dentist, osteopathic physician, podiatrist, chiropractor, homeopathic physician and

surgeon, registered or licensed practical nurse or physician's assistant~~;~~ and

~~(e)~~ 3. "Health services" means services delivered by any health professional including examination, preventive and curative treatment, surgical, hospitalization, and psychological services, except abortion or sterilization. Should the health services include counseling concerning abortion, all alternatives will be fully presented to the minor. Services in this act shall not include research or experimentation with minors except where used in an attempt to preserve the life of that minor, or research as approved by an appropriate review board involved in the management of reportable diseases.

SECTION 29. AMENDATORY 63 O.S. 1991, Section 1-707a, as amended by Section 1, Chapter 134, O.S.L. 1995 (63 O.S. Supp. 1997, Section 1-707a), is amended to read as follows:

Section 1-707a. A. The administrator in charge of each hospital or related institution licensed by the State Commissioner of Health shall accept for consideration each application for professional staff privileges submitted by a person licensed to practice:

1. Medicine by the State Board of Medical Licensure and Supervision;
2. Osteopathy by the State Board of Osteopathy;
3. Podiatry by the State Board of Podiatry; ~~or~~
4. As a health service psychologist by the Oklahoma State Board of Examiners of Psychologists; or
5. Homeopathic medicine and surgery by the State Board of Homeopathic Physicians and Surgeons.

B. The application shall be acted upon by the governing board of the hospital within a reasonable time. A written report of such action shall be furnished to the applicant thereafter.

C. If a hospital grants staff privileges to a psychologist, at the time of admission of a patient of the psychologist to the hospital, the psychologist or the hospital shall identify a psychiatrist, a medical doctor, ~~or~~ a doctor of osteopathy or homeopathic physician and surgeon who shall be responsible for the medical evaluation and medical management of the patient.

SECTION 30. AMENDATORY 68 O.S. 1991, Section 1357.6, is amended to read as follows:

Section 1357.6 A. Effective July 1, 1992, there are hereby exempted from the tax levied by this article, ~~Section 1351 et seq. of Title 68 of the Oklahoma Statutes,~~ sales of drugs or medicine for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to prosthetic devices, as defined in subsection C of this section, and durable medical equipment, as defined in subsection D of this section, when administered or distributed by a practitioner, as defined in subsection B of this section, who is authorized by law to administer or distribute such items or when purchased or leased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner who is authorized by law to prescribe such items and when the cost of such items is reimbursable to the practitioner, supplier or the individual under the Medicare or Medicaid Program.

B. ~~The term "practitioner"~~ For purposes of this section:

1. "Practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, homeopathic physician and surgeon, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law-~~i~~

~~C. The term "prosthetic device"~~ 2. "Prosthetic device" means a device which replaces a missing part or function of the human body

and shall include any supplies physically connected to such device ~~;~~
and

~~D. The term "durable medical equipment"~~ 3. "Durable medical equipment" means equipment which:

~~1. Can~~ a. can withstand repeated use ~~;~~;

~~2. Is~~ b. is primarily and customarily used to serve a medical purpose ~~;~~;

~~3. Generally~~ c. generally is not useful to a person in the absence of illness or injury ~~;~~; and

~~4. Is~~ d. is appropriate for use in the home.

SECTION 31. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 6, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 1997, Section 14), is amended to read as follows:

Section 14. A. 1. The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury. The attending physician shall supply the injured employee and the employer with a full examining report of injuries found at the time of examination and proposed treatment, this report to be supplied within seven (7) days after the examination; also, at the conclusion of the treatment the attending physician shall supply a full report of his treatment to the employer of the injured employee.

2. The attending physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work.

In the event the attending physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer.

B. The employer's selected physician shall have the right to examine the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.

C. If the employer fails or neglects to provide medical treatment within three (3) days after knowledge of the injury, the injured employee, during the period of such neglect or failure, may do so at the expense of the employer; provided, however, that the injured employee, or another in the employee's behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer. Unless a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier has previously contracted with a certified workplace medical plan, the employee may select a physician of the employee's choice to render necessary medical treatment, at the expense of the employer. The attending physician so selected by the employee shall notify the employer and the insurance carrier within seven (7) days after examination or treatment was first rendered. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. a. The employee shall have the right, for each work-related injury, to select any physician from a list of physicians provided by the employer at the time of making an election not to participate in the certified

workplace medical plan. The list shall consist only of physicians who have:

(1) maintained the employee's medical records prior to an injury and have a documented history of treatment with the employee prior to an injury, or

(2) maintained the medical records of an immediate family member of the employee prior to an injury and have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this division, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents.

b. An attending physician selected under this paragraph must agree to comply with all the rules, terms, and conditions of the certified workplace medical plan. An attending physician selected under this paragraph may refer the employee to a physician outside the certified workplace medical plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the certified workplace medical plan; or

2. The employee shall elect to participate in the certified workplace medical plan.

D. The term "physician" as used in this section shall mean any person licensed in this state as a medical doctor, chiropractor, podiatrist, dentist, osteopathic physician, homeopathic physician and surgeon, or optometrist. The Court may accept testimony from a psychologist if the testimony is made under the direction of a medical doctor. If an injured employee should die, whether or not the employee has filed a claim, that fact shall not affect liability

for medical attention previously rendered, and any person entitled to such benefits may enforce charges therefor as though the employee had survived.

E. 1. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator.

2. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy.

3. The Administrator shall adopt a new fee and treatment schedule to be effective not later than January 1, 1998, which establishes maximum allowable reimbursement levels for preparation for or testimony at a deposition or court appearance which shall not exceed Two Hundred Dollars (\$200.00) per hour and for work related or medical disability evaluation services.

4. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the Administrator approving medical and treatment charges pursuant to this section shall be

enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus.

F. The Court or Administrator shall have authority on application of employee or employer or its insurance carrier to order a change of physicians at the expense of the employer when, in its judgment, such change is desirable or necessary; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act.

G. If the employee chooses a physician for treatment and subsequently changes physicians without the prior approval of the

Court or Administrator except when prior approval is waived for good cause shown, or without agreement of the parties, the maximum liability of the employer for the aggregate expenses of all such subsequent physicians shall be Five Hundred Dollars (\$500.00). Provided, the limitations shall not apply to referrals by the treating physician for treatment or diagnostic procedures.

SECTION 32. 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.

46-2-8006

KSM