

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1189

6 By: Thornbrugh

7 COMMITTEE SUBSTITUTE

8 An Act relating to professions and occupations;  
9 amending 59 O.S. 1991, Section 492, as last amended  
10 by Section 4, Chapter 324, O.S.L. 1998, and Section  
11 33, Chapter 323, O.S.L. 1994 (59 O.S. Supp. 1998,  
12 Sections 492 and 509.1), which relate to the State  
13 Board of Medical Licensure and Supervision;  
14 authorizing the rendering of certain service by an  
15 unlicensed trained assistant; specifying certain  
16 restrictions; adding disciplinary action for  
17 surrender of license in lieu of prosecution  
18 procedure; providing procedures; requiring certain  
19 statements; providing for costs; and providing an  
20 effective date.

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

22 SECTION 1. AMENDATORY 59 O.S. 1991, Section 492, as last  
23 amended by Section 4, Chapter 324, O.S.L. 1998 (59 O.S. Supp. 1998,  
24 Section 492), is amended to read as follows:

25 Section 492. A. Every person shall be regarded as practicing  
26 allopathic medicine within the meaning and provisions of this act,  
27 who shall append to his or her name the letters "M.D.", "Doctor",  
28 "Professor", "Specialist", "Physician" or any other title, letters  
29 or designation which represent that such person is a physician, or  
30 who shall for a fee or any form of compensation diagnose and/or  
31 treat disease, injury or deformity of persons in this state by any  
32 allopathic legend drugs, surgery, manual, or mechanical treatment  
unless otherwise authorized by law.

B. 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

1 other organization organized and operated for such purpose, may  
2 employ one or more persons who are duly licensed to practice  
3 medicine in this state without being regarded as itself practicing  
4 medicine within the meaning and provisions of this section. The  
5 employment by the hospital or related institution of any person who  
6 is duly licensed to practice medicine in this state shall not, in  
7 and of itself, be considered as an act of unprofessional conduct by  
8 the person so employed. Nothing provided herein shall eliminate,  
9 limit, or restrict the liability for any act or failure to act of  
10 any hospital, any hospital's employees, or persons duly licensed to  
11 practice medicine.

12 C. The definition of the practice of medicine and surgery shall  
13 include, but is not limited to:

14 1. Advertising, holding out to the public, or representing in  
15 any manner that one is authorized to practice medicine and surgery  
16 in this state;

17 2. Any offer or attempt to prescribe, order, give, or  
18 administer any drug or medicine and surgery for the use of any other  
19 person, except as otherwise authorized by law;

20 3. a. Any offer or attempt, except as otherwise authorized  
21 by law, to prevent, diagnose, correct, or treat in any  
22 manner or by any means, methods, devices, or  
23 instrumentalities except for manual manipulation any  
24 disease, illness, pain, wound, fracture, infirmity,  
25 defect, or abnormal physical or mental condition of  
26 any person, including the management of pregnancy and  
27 parturition, except as otherwise authorized by law.

28 b. Except as provided in subsection D of this section,  
29 performance by a person outside of this state, through  
30 an ongoing regular arrangement, of diagnostic or  
31 treatment services through electronic communications  
32 for any patient whose condition is being diagnosed or

1 treated within this state. A person who performs any  
2 of the functions covered by this subparagraph submits  
3 himself or herself to the jurisdiction of the courts  
4 of this state for the purposes of any cause of action  
5 resulting from the functions performed.

6 c. Nothing in the Oklahoma Allopathic Medical and  
7 Surgical Licensure and Supervision Act shall be  
8 construed to affect or give jurisdiction to the Board  
9 over any person other than medical doctors or persons  
10 holding themselves out as medical doctors;

11 4. Any offer or attempt to perform any surgical operation upon  
12 any person, except as otherwise authorized by law; and

13 5. The use of the title Doctor of Medicine, Physician, Surgeon,  
14 Physician and Surgeon, Dr., M.D. or any combination thereof in the  
15 conduct of any occupation or profession pertaining to the  
16 prevention, diagnosis, or treatment of human disease or condition  
17 unless, where appropriate, such a designation additionally contains  
18 the description of another branch of the healing arts for which one  
19 holds a valid license in this state.

20 D. The practice of medicine and surgery, as defined in this  
21 section, shall not include:

22 1. A student while engaged in training in a medical school  
23 approved by the Board or while engaged in graduate medical training  
24 under the supervision of the medical staff of a hospital or other  
25 health care facility approved by the state medical board for such  
26 training, except that a student engaged in graduate medical training  
27 shall hold a license issued by the Board for such training;

28 2. Any person who provides medical treatment in cases of  
29 emergency where no fee or other consideration is contemplated,  
30 charged or received;

31 3. A commissioned medical officer of the armed forces of the  
32 United States or medical officer of the United States Public Health

1 Service of the Veterans Administration of the United States in the  
2 discharge of official duties and/or within federally controlled  
3 facilities; and provided that such person shall be fully licensed to  
4 practice medicine and surgery in one or more jurisdictions of the  
5 United States; provided further that such person who holds a medical  
6 license in this state shall be subject to the provisions of the  
7 Oklahoma Allopathic Medical and Surgical Licensure and Supervision  
8 Act;

9 4. Any person licensed under any other act when properly  
10 practicing in the healing art for which that person is duly  
11 licensed;

12 5. The practice of those who endeavor to prevent or cure  
13 disease or suffering by spiritual means or prayer;

14 6. Any person administering a domestic or family remedy to a  
15 member of such person's own family;

16 7. Any person licensed to practice medicine and surgery in  
17 another state or territory of the United States who renders  
18 emergency medical treatment or briefly provides critical medical  
19 service at the specific lawful direction of a medical institution or  
20 federal agency that assumes full responsibility for that treatment  
21 or service and is approved by the Board;

22 8. Any person who is licensed to practice medicine and surgery  
23 in another state or territory of the United States whose sole  
24 purpose and activity is limited to brief actual consultation with a  
25 specific physician who is licensed to practice medicine and surgery  
26 by the Board, other than a person with a special or restricted  
27 license; or

28 9. The practice of any other person as licensed by appropriate  
29 agencies of this state, provided that such duties are consistent  
30 with the accepted standards of the person's profession and the  
31 person does not represent himself or herself as a Doctor of  
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1 Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., or  
2 any combination thereof.

3 E. Nothing in the Oklahoma Allopathic Medical and Surgical  
4 Licensure and Supervision Act shall prohibit service rendered by a  
5 physician's unlicensed trained assistant, if such service is  
6 rendered under the supervision and control of a licensed physician  
7 pursuant to Board rules, or the service of any other person duly  
8 licensed or certified by the state to practice the healing arts.

9 F. Nothing in the Oklahoma Allopathic Medical and Surgical  
10 Licensure and Supervision Act shall prohibit services rendered by  
11 any person not licensed by the Board and practicing any  
12 nonallopathic healing practice.

13 SECTION 2. AMENDATORY Section 33, Chapter 323, O.S.L.  
14 1994 (59 O.S. Supp. 1998, Section 509.1), is amended to read as  
15 follows:

16 Section 509.1 A. RANGE OF ACTIONS: The State Board of Medical  
17 Licensure and Supervision may impose disciplinary actions in  
18 accordance with the severity of violation of ~~this act~~ the Oklahoma  
19 Allopathic Medical and Surgical Licensure and Supervision Act.

20 Disciplinary actions may include but are not limited to the  
21 following:

- 22 1. Revocation of the medical license;
- 23 2. Suspension of the medical license;
- 24 3. Probation;
- 25 4. Stipulations, limitations, restrictions, and conditions  
26 relating to practice;
- 27 5. Censure (including specific redress, if appropriate);
- 28 6. Reprimand;
- 29 7. A period of free public or charity service; and
- 30 8. Satisfactory completion of an educational, training, and/or  
31 treatment program or programs.

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1 Provided, as a condition of disciplinary action sanctions, the Board  
2 may impose as a condition of any disciplinary action, the payment of  
3 costs expended by the Board for any legal fees and costs and  
4 probation and monitoring fees, including but not limited to staff  
5 time, salary and travel expense, witness fees and attorney fees.  
6 The Board may take such actions singly or in combination as the  
7 nature of the violation requires.

8 B. LETTER OF CONCERN: The Board may authorize the secretary to  
9 issue a letter of concern to a licensee when evidence does not  
10 warrant formal proceedings, but the secretary has noted indications  
11 of possible errant conduct that could lead to serious consequences  
12 and formal action. The letter of concern may contain, at the  
13 secretary's discretion, clarifying information from the licensee.

14 C. EXAMINATION/EVALUATION: The Board may, upon reasonable  
15 cause, require professional competency, physical, mental, or  
16 chemical dependency examinations of any licensee, including  
17 withdrawal and laboratory examination of body fluids.

18 D. DISCIPLINARY ACTION AGAINST LICENSEES:

19 1. The Board shall promulgate and adopt rules of Professional  
20 Conduct for professional conduct of physicians ~~under this act~~  
21 pursuant to the Oklahoma Allopathic Medical and Surgical Licensure  
22 and Supervision Act; and

23 2. Grounds for Action: The Board may take disciplinary action  
24 for unprofessional or unethical conduct as deemed appropriate based  
25 upon the merits of each case and as set out by rule. The Board  
26 shall not revoke the license of a person otherwise qualified to  
27 practice allopathic medicine within the meaning of ~~this act~~ the  
28 Oklahoma Allopathic Medical and Surgical Licensure and Supervision  
29 Act solely because the person's practice or a therapy is  
30 experimental or nontraditional.

31 Reports of all disciplinary action provided for in this section  
32 will be available to the public upon request.

1       E. SURRENDER IN LIEU OF PROSECUTION: The Board may accept a  
2 surrender of license from a licensee who has engaged in  
3 unprofessional conduct in lieu of Board staff prosecuting a pending  
4 disciplinary action or filing formal disciplinary proceedings only  
5 as provided in this section. To effect such a surrender, the  
6 licensee must submit a sworn statement to the Board:

7       1. Expressing the licensee's desire to surrender the license;

8       2. Acknowledging that the surrender is freely and voluntarily  
9 made, that the licensee has not been subjected to coercion or  
10 duress, and that the licensee is fully aware of the consequences of  
11 the license surrender;

12       3. Stating that the licensee is the subject of an investigation  
13 or proceeding by the Board or a law enforcement or other regulatory  
14 agency involving allegations which, if proven, would constitute  
15 grounds for disciplinary action by the Board; and

16       4. Specifically describing the misconduct.

17       The sworn written statement must be submitted with the  
18 licensee's wallet card and wall certificate. The Secretary or  
19 Executive Director of the Board may accept the sworn statement,  
20 wallet card and wall certificate from a licensee pending formal  
21 acceptance by the Board. The issuance of a complaint and citation  
22 by the Board shall not be necessary for the Board to accept a  
23 surrender under this section. A surrender under this section shall  
24 be considered disciplinary action by the Board in all cases, even in  
25 cases where surrender occurs prior to the issuance of a formal  
26 complaint and citation, and shall be reported as disciplinary action  
27 by the Board to the public and any other entity to whom the Board  
28 regularly reports disciplinary actions. As a condition to  
29 acceptance of the surrender, the Board may require the licensee to  
30 pay the costs expended by the Board for any legal fees and costs and  
31 any investigation, probation and monitoring fees, including but not  
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1 limited to staff time, salary and travel expense, witness fees and  
2 attorney fees.

3 SECTION 3. This act shall become effective November 1, 1999.

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