

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 154

By: Shurden

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 622, as last amended by Section 2, Chapter 147, O.S.L. 1996, 626, as amended by Section 7, Chapter 230, O.S.L. 1993, 627, as amended by Section 8, Chapter 230, O.S.L. 1993, 632, as last amended by Section 4, Chapter 152, O.S.L. 1995, 633, as amended by Section 14, Chapter 230, O.S.L. 1993, 637, as amended by Section 17, Chapter 230, O.S.L. 1993, 641, as amended by Section 20, Chapter 230, O.S.L. 1993, 643, as amended by Section 22, Chapter 230, O.S.L. 1993, and 644, as amended by Section 23, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Sections 622, 626, 627, 632, 633, 637, 641, 643, and 644), which relate to the Oklahoma Osteopathic Medicine Act; requiring specified interns be licensed; providing limits on practice involving electronic means; clarifying places where access, entrance, or inspection is authorized; deleting requirement that records be kept in a book; requiring notice of change of address within specified period of time; deleting provisions for retaking of examination; modifying conditions for requiring license be issued; modifying grounds for actions by board; recognizing equivalent education; modifying purposes for which monies in fund may be expended; modernizing usage; deleting superfluous language; repealing 59 O.S. 1991, Section 628, as amended by Section 9, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 628), which relates to examinations; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 622, as last amended by Section 2, Chapter 147, O.S.L. 1996 (59 O.S. Supp. 2000, Section 622), is amended to read as follows:

Section 622. A. 1. Except as otherwise provided by this section, it shall be unlawful for any person to practice as an osteopathic physician and surgeon in this state, without a license to do so, issued by the State Board of Osteopathic Examiners;

provided, that any license or certificate heretofore issued under the laws of this state, authorizing its holder to practice osteopathic medicine, shall remain in full force and effect.

2. Osteopathic physicians engaged in postgraduate training beyond the internship year, also known as PGY-1, shall be licensed.

B. 1. A person within or outside of this state who performs through electronic communications diagnostic or treatment services within the scope of practice of an osteopathic 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 Osteopathic Medicine Act. However, in such cases, a nonresident osteopathic 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. Any osteopathic physician licensed in this state who engages in the prescription of drugs, devices, or treatments via electronic means may do so only in the context of an appropriate physician/patient relationship wherein a proper patient record is maintained including, at the minimum, a current history and physical.

3. Any commissioned medical officer of the armed forces of the United States or medical officer of the United States Public Health Service or the Veterans Administration of the United States, in the discharge of official duties and/or within federally controlled facilities, who is fully licensed to practice osteopathic medicine and surgery in one or more jurisdictions of the United States shall not be required to be licensed in this state pursuant to the Oklahoma Osteopathic Medicine Act, unless the person already holds an osteopathic medical license in this state pursuant to the Oklahoma Osteopathic Medicine Act. In such case, the medical officer shall be subject to the Oklahoma Osteopathic Medicine Act.

~~3.~~ 4. 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 osteopathic medicine in this state without being regarded as itself practicing osteopathic 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 osteopathic medicine.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 626, as amended by Section 7, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 626), is amended to read as follows:

Section 626. A. 1. The State Board of Osteopathic Examiners 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 Osteopathic Medicine 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 State 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 State 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 Osteopathic Medicine 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 Osteopathic Medicine 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 Osteopathic Medicine Act in order to determine whether or not licensees are in compliance with the Oklahoma Osteopathic Medicine 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 osteopathic medicine.

D. Any licensee or applicant for license subject to the provisions of the Oklahoma Osteopathic Medicine 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, either on-site

or at the Board office, or facilities of such licensee or applicant subject to the Oklahoma Osteopathic Medicine 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 where the facility or records are located to allow such access, entry, or inspection.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 627, as amended by Section 8, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 627), is amended to read as follows:

Section 627. A. The State Board of Osteopathic Examiners 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, and place ~~and duration~~ of residence of each applicant;
2. The time spent in the study of osteopathic medicine;
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 Osteopathic Medicine Act; and
5. The name, known place of business and residence, and the date and number of license of each registered osteopathic physician and surgeon.

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

B. The secretary of said Board shall on the first of March of each year submit an official copy of said register to the 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 Osteopathic Examiners, or the Secretary of State, shall be admitted in evidence in all courts of the state.

C. It shall be the responsibility of each osteopathic physician licensed under this act to provide the Board with a notice of change of address within fourteen (14) business days after any relocation of practice activity.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 632, as last amended by Section 4, Chapter 152, O.S.L. 1995 (59 O.S. Supp. 2000, Section 632), is amended to read as follows:

Section 632. A. The examination of those who desire to practice as osteopathic physicians shall embrace those general subjects and topics, a knowledge of which is commonly and generally required of candidates for a D.O. degree, Doctor of Osteopathy or Doctor of Osteopathic Medicine, by accredited osteopathic colleges in the United States. An examination furnished by the National Board of Osteopathic Medical Examiners shall be deemed to fulfill this requirement.

B. The applicant may be accepted who has successfully completed the examination sequence of the National Board of Osteopathic Medical Examiners and meets all other requirements.

~~C. If the applicant fails the examination, then the applicant may apply to take another examination. The applicant shall not be eligible to take another examination until after six (6) months have elapsed. The applicant shall not be eligible, except in the case of clear and compelling mitigating circumstances, to take more than three examinations.~~

SECTION 5. AMENDATORY 59 O.S. 1991, Section 633, as amended by Section 14, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 633), is amended to read as follows:

Section 633. Each applicant who ~~successfully passes the examination and~~ has met ~~other~~ all requirements for licensure shall

be issued a license to practice as an osteopathic physician and surgeon.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 637, as amended by Section 17, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 637), is amended to read as follows:

Section 637. A. The State Board of Osteopathic Examiners 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 an osteopathic physician, 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 osteopathic 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, noting that delegation may only occur within an appropriate doctor/patient relationship, wherein a proper patient record is maintained including, but not limited to, at the minimum, a current history and physical,
- 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 Osteopathic Medicine 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 or 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, or violating any state or federal law on controlled dangerous substances,
- h. engaging in any sexual activity within a 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 another physician; 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 this 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 entered a plea of guilty or nolo contendere in a criminal prosecution, for any offense reasonably related to the qualifications, functions or duties of an osteopathic physician, 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 osteopathic 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 an osteopathic physician in a manner consistent with the public's 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 one's own;

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; and

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

B. The State Board of Osteopathic Examiners 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 him or her and a public hearing by the State 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 Osteopathic Examiners 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 presiding officer of said Board shall have the authority to compel the giving of testimony as is conferred on courts of justice.

D. Any osteopathic physician in the State of Oklahoma whose license to practice osteopathic medicine is revoked or suspended under the previous paragraphs 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 and regulations 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 7. AMENDATORY 59 O.S. 1991, Section 641, as amended by Section 20, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 641), is amended to read as follows:

Section 641. A. All persons legally licensed to practice osteopathic medicine in this state, on or before the first day of July of each year, shall apply to the secretary-treasurer of ~~said~~ the Board, on forms furnished thereby, for a renewal certificate of registration entitling such licensee to practice osteopathic 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 State Board of Osteopathic Examiners, for a renewal of ~~such~~ the person's certificate to practice osteopathic medicine.

C. In addition to the payment of ~~such~~ the annual renewal fee each licensee ~~se~~ applying for a renewal of ~~such~~ the certificate shall furnish to ~~said~~ the State Board of Osteopathic Examiners proof that ~~such~~ the person has attended at least two (2) days of the annual educational program conducted by the Oklahoma Osteopathic Association, or its equivalent, as determined by the Board, in the fiscal year preceding ~~such~~ the application for a renewal, ~~providing that; provided,~~ the Board may excuse the failure of ~~said~~ the licensee to attend ~~said~~ the educational program in the case of illness or other unavoidable casualty rendering it impossible for ~~said~~ the licensee to have attended ~~said~~ the educational program or its equivalent.

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

SECTION 8. AMENDATORY 59 O.S. 1991, Section 643, as amended by Section 22, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 643), is amended to read as follows:

Section 643. The funds received pursuant to the Oklahoma Osteopathic Medicine Act shall be deposited to the credit of the State Board of Osteopathic Examiners Revolving Fund and may be expended by the State Board of Osteopathic Examiners and under its direction in assisting in the enforcement of the laws of this state prohibiting the unlawful practice of osteopathic medicine, assisting in the support of a peer assistance program, 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 Osteopathic Medicine Act.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 644, as amended by Section 23, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 644), is amended to read as follows:

Section 644. There is hereby created in the State Treasury a revolving fund for the State Board of Osteopathic Examiners, to be designated the "State Board of Osteopathic Examiner's 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 Osteopathic Medicine 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 of this state which prohibit the unlawful practice of osteopathic medicine ~~and~~, for the dissemination of information to prevent the violation of such laws, and for the purchase of supplies and such other expense as is necessary to properly implement the provisions of the Oklahoma Osteopathic Medicine 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 State Board of Osteopathic Examiners and filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 10. REPEALER 59 O.S. 1991, Section 628, as amended by Section 9, Chapter 230, O.S.L. 1993 (59 O.S. Supp. 2000, Section 628), is hereby repealed.

SECTION 11. This act shall become effective November 1, 2001.

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