

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 369

By: Shurden of the Senate

and

Stanley of the House

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 2001, Section 355, which relates to the Oklahoma Pharmacy Act; modifying definition; amending 59 O.S. 2001, Sections 491, 493.2, as amended by Section 2, Chapter 213, O.S.L. 2002, 493.4, 495h, 500, 508.2, 509, 509.1, as amended by Section 4, Chapter 213, O.S.L. 2002 and 513 (59 O.S. Supp. 2003, Sections 493.2 and 509.1), which relate to allopathic physicians; updating and clarifying language; authorizing penalties for certain suspended licenses; providing for special training licenses; limiting reinstatement for certain revocations; modifying certain definitions; providing for rules for unprofessional or unethical conduct; providing for revocation of licenses upon conviction of certain crimes; amending 59 O.S. 2001, Section 638, which relates to the Oklahoma Osteopathic Medicine Act; modifying punishment for certain offenses; amending 59 O.S. 2001, Section 3003, which relates to the Orthotics and Prosthetics Practice Act; modifying list of persons to whom act is not applicable; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 355, is amended to read as follows:

Section 355. As used in ~~Section 353.1 et seq. of this title~~ the Oklahoma Pharmacy Act:

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, pediatricist~~ an allopathic physician, osteopathic physician, podiatric physician, dentist, veterinarian, 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 2. AMENDATORY 59 O.S. 2001, Section 491, is amended to read as follows:

Section 491. A. 1. Every person before practicing medicine and surgery or any of the branches or departments of ~~such~~ medicine and surgery, within the meaning of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, within ~~the State of Oklahoma~~ this state, must be in legal possession of the unrevoked license or certificate ~~herein provided for, and any~~ issued pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.

2. Any person ~~so~~ practicing in such manner within this state, who is not in ~~such~~ the legal possession ~~thereof~~ of such license or certificate, shall, upon conviction thereof, be guilty of a ~~misdemeanor~~ felony, and shall, ~~upon conviction thereof~~, in any court having jurisdiction, be fined for:

- a. the first offense in any sum not less than One Thousand Dollars (\$1,000.00), and not more than Five Thousand Dollars (\$5,000.00), and ~~shall, for~~

b. any succeeding offense, ~~be subject to fine in like amount as provided in subparagraph a of this paragraph,~~ and in addition thereto, ~~shall~~ be imprisoned in a county jail for a period of time not less than thirty (30) days, nor more than one hundred eighty (180) days; ~~and in.~~

3. In all instances, each day's practice shall constitute a separate and distinct offense. ~~It is further provided, that any~~

4. Any person who ~~shall render such professional services practices medicine and surgery or any of the branches or departments thereof~~ without first complying with the provisions of ~~this act~~ the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, shall, in addition to the other penalties ~~herein~~ provided therein, receive no compensation for such medical and surgical or branches or departments thereof services.

B. 1. If ~~the~~ a license has been revoked ~~or suspended pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act whether for disciplinary reasons or for failure to renew their license,~~ the State Board of Medical Licensure and Supervision may, ~~pursuant~~ subject to rules ~~adopted and~~ promulgated by the Board, assess and collect an administrative fine not to exceed Five Thousand Dollars (\$5,000.00) for each day after revocation or suspension whether for disciplinary reasons or for failure to renew their license that the person practices medicine and surgery or any of the branches or departments ~~of such, within the meaning of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act,~~ thereof within this state.

2. Fines assessed shall be in addition to ~~such fines or imprisonment as may be invoked~~ any penalty provided pursuant to subsection A of this section.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 493.2, as amended by Section 2, Chapter 213, O.S.L. 2002 (59 O.S. Supp. 2003, Section 493.2), is amended to read as follows:

Section 493.2 A. Foreign applicants shall meet all requirements for licensure as provided in Sections 492.1 and 493.1 of this title.

B. 1. A foreign applicant shall possess the degree of Doctor of Medicine or a Board-approved equivalent based on satisfactory completion of educational programs from a school with education and training substantially equivalent to that offered by the University of Oklahoma College of Medicine.

2. In the event ~~clerkships were utilized by~~ the foreign medical school, ~~such clerkships shall have been performed in hospitals and schools~~ utilized clerkships in the United States, its territories or possessions, such clerkships shall have been performed in hospitals and schools that have programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) ~~accredited programs~~.

C. A foreign applicant shall have a command of the English language that is satisfactory to the State Board of Medical Licensure and Supervision, demonstrated by the passage of an oral English competency examination.

D. The Board may promulgate rules requiring all foreign applicants to satisfactorily complete at least twelve (12) months and up to twenty-four (24) months of Board-approved progressive graduate medical training as determined necessary by the Board for the protection of the public health, safety and welfare.

E. All credentials, diplomas and other required documentation in a foreign language submitted to the Board by such applicants shall be accompanied by notarized English translations.

F. Foreign applicants shall provide satisfactory evidence of having met the requirements for permanent residence or temporary

nonimmigrant status as set forth by the United States Immigration and Naturalization Service.

G. Foreign applicants shall provide a certified copy of the Educational Commission for Foreign Medical Graduates (ECFMG) Certificate to the Board at such time and in such manner as required by the Board. The Board may waive the requirement for an Educational Commission for Foreign Medical Graduates Certificate by rule for good cause shown.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 493.4, is amended to read as follows:

Section 493.4 A. No person who is granted a special training license shall practice outside the limitations of such license.

B. To be eligible for special training licensure, the applicant shall have completed all the requirements for full and unrestricted medical licensure except graduate education and/or licensing examination or other requirements relative to the basis for the special training license.

C. By rule, the State Board of Medical Licensure and Supervision shall establish restrictions for special training licensure to assure that the holder will practice only under appropriate circumstances as set by the Board.

D. A special training license shall be renewable annually upon the approval of the Board and upon the evaluation of performance in the special circumstances upon which the special training license was granted.

E. The issuance of a special training license shall not be construed to imply that a full and unrestricted medical license will be issued at a future date.

F. All other provisions of ~~this act~~ the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall apply to holders of special training licenses.

G. This section shall not limit the authority of any state agency or educational institution in this state which employs a ~~special~~ special training licensed physician to impose additional practice limitations upon such physician.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 495h, is amended to read as follows:

Section 495h. The State Board of Medical Licensure and Supervision may require satisfactory evidence of professional competence and good moral character from applicants requesting reinstatement of any license or certificate issued by the Board. The Board may set criteria for measurement of professional competence by rule ~~or may instruct the professional advisory committee to evaluate applicants for current level of professional competence.~~

SECTION 6. AMENDATORY 59 O.S. 2001, Section 500, is amended to read as follows:

Section 500. Each person holding a license authorizing the practice of medicine and surgery in this state shall notify the State Board of Medical Licensure and Supervision, in writing, of such licensee's current practice location and mailing address. Each licensee shall carry on his or her person at all times while engaged in such practice of medicine and surgery official verification of valid and effective licensure as may be issued by the Board.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 508.2, is amended to read as follows:

Section 508.2 A. At any time after the expiration of twelve (12) months from the date the license of any person to practice medicine or surgery has been revoked with right to reapply, or at any time after the expiration of six (6) months from the date the license of any person to practice medicine or surgery has been suspended by the Board, such person whose license has been so revoked or suspended may file an application with the secretary of

the State Board of Medical Licensure and Supervision, together with an application fee set by the Board, to reinstate ~~his~~ the license. A licensee that has had a license revoked, suspended or has surrendered the license in lieu of prosecution shall not be reinstated and no probation shall be lifted unless the licensee has paid all fines and reimbursements in a manner satisfactory to the Board.

B. The application shall be assigned for hearing at the next regular meeting of the Board following the filing thereof, ~~or.~~ In addition the Board may authorize the secretary to ~~hear same~~ hold a hearing on the application at any time ~~and.~~ In such cases, the Board shall have the authority and right to reconsider ~~such the~~ order and decision of revocation or suspension and, ~~in its discretion and for.~~

C. For such causes and reasons deemed by it sufficient and for the best interest of the medical profession and the citizens of this state, the Board may reinstate ~~the~~ a license of ~~the~~ an applicant and issue the order therefor.

D. The Board may negotiate with the licensee a plan of repayment for any fines or other costs that is satisfactory to the Board.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 509, is amended to read as follows:

Section 509. The words "unprofessional conduct" as used in Sections 481 through 514 of this title are hereby declared to include, but shall not be limited to, the following:

1. Procuring, aiding or abetting a criminal operation;
2. ~~Advertising to the public in any manner; provided, however, that a person, firm, association or corporation may place an announcement in a newspaper regarding the opening of an office, change of an address or membership in a firm, association or corporation, the closing of an office, permanent or temporary, for~~

~~whatever reason, and the specialty or specialties of person or persons, firm, association or corporation;~~

~~3.~~ 3. The obtaining of any fee or offering to accept any fee, present or other form of remuneration whatsoever, on the assurance or promise that a manifestly incurable disease can or will be cured;

~~4.~~ 3. Willfully betraying a professional secret to the detriment of the patient;

~~5.~~ 4. Habitual intemperance or the habitual use of habit-forming drugs;

~~6.~~ 5. Conviction of a felony or of any offense involving moral turpitude;

~~7.~~ 6. All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;

~~8.~~ 7. Conviction or confession of a crime involving violation of:

- a. the antinarcotic or prohibition laws and regulations of the federal government,
- b. the laws of this state, or
- c. State Board of Health rules;

~~9.~~ 8. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public;

~~10.~~ 9. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct;

~~11.~~ 10. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs;

~~12.~~ 11. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs;

~~13.~~ 12. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship;

~~14.~~ 13. The violation, or attempted violation, direct or indirect, of any of the provisions of ~~this act~~ the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, either as a principal, accessory or accomplice;

~~15.~~ 14. Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state;

~~16.~~ 15. The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the State Board of Medical Licensure and Supervision may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it. If the physician refuses to submit to the examination, the Board shall issue an order requiring the physician to show cause why the physician will not submit to the examination and shall schedule a hearing on the order within thirty (30) days after notice is served on the physician. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and the physician's attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. The medical license of a physician

ordered to submit for examination may be suspended until the results of the examination are received and reviewed by the Board;

~~17.~~ 16. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards;

~~18.~~ 17. Engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient;

~~19.~~ 18. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; or

~~20.~~ 19. Failure to provide necessary ongoing medical treatment when a doctor-patient relationship has been established, which relationship can be severed by either party providing a reasonable period of time is granted.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 509.1, as amended by Section 4, Chapter 213, O.S.L. 2002 (59 O.S. Supp. 2003, Section 509.1), is amended to read as follows:

Section 509.1 A. RANGE OF ACTIONS: The State Board of Medical Licensure and Supervision may impose disciplinary actions in accordance with the severity of violation of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. Disciplinary actions may include, but are not limited to the following:

1. Revocation of the medical license with or without the right to reapply;

2. Suspension of the medical license;

3. Probation;

4. Stipulations, limitations, restrictions, and conditions relating to practice;

5. Censure ~~(, including specific redress, if appropriate);~~

6. Reprimand;
7. A period of free public or charity service; ~~and~~
8. Satisfactory completion of an educational, training, and/or treatment program or programs; and
9. Administrative fines of up to Five Thousand Dollars (\$5,000.00) per violation.

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

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

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

D. DISCIPLINARY ACTION AGAINST LICENSEES:

1. The Board shall promulgate ~~and adopt~~ rules ~~of Professional Conduct for professional~~ describing acts of unprofessional or unethical conduct ~~of~~ by physicians pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act; and

2. Grounds for Action: The Board may take disciplinary action for unprofessional or unethical conduct as deemed appropriate based upon the merits of each case and as set out by rule. The Board shall not revoke the license of a person otherwise qualified to

practice allopathic medicine within the meaning of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act solely because the person's practice or a therapy is experimental or nontraditional.

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

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

- a. expressing the licensee's desire to surrender the license,
- b. acknowledging that the surrender is freely and voluntarily made, that the licensee has not been subjected to coercion or duress, and that the licensee is fully aware of the consequences of the license surrender,
- c. stating that the licensee is the subject of an investigation or proceeding by the Board or a law enforcement or other regulatory agency involving allegations which, if proven, would constitute grounds for disciplinary action by the Board, and
- d. specifically admitting to and describing the misconduct.

2. The sworn written statement must be submitted with the licensee's wallet card and wall certificate. The Secretary or Executive Director of the Board may accept the sworn statement, wallet card and wall certificate from a licensee pending formal acceptance by the Board. The issuance of a complaint and citation by the Board shall not be necessary for the Board to accept a

surrender under this subsection. A surrender under this subsection shall be considered disciplinary action by the Board in all cases, even in cases where surrender occurs prior to the issuance of a formal complaint and citation, and shall be reported as disciplinary action by the Board to the public and any other entity to whom the Board regularly reports disciplinary actions.

3. As a condition to acceptance of the surrender, the Board may require the licensee to pay the costs expended by the Board for any legal fees and costs and any investigation, probation and monitoring fees including, but not limited to, staff time, salary and travel expense, witness fees and attorney fees.

4. The licensee whose surrender in lieu of prosecution is accepted by the Board shall be ineligible to reapply for reinstatement of his or her license for at least one (1) year from the date of the accepted surrender.

SECTION 10. AMENDATORY 59 O.S. 2001, Section 513, is amended to read as follows:

Section 513. A. 1. The Board is hereby given quasi-judicial powers while sitting as a Board for the purpose of revoking, suspending or imposing other disciplinary actions upon the license of physicians or surgeons of this state, and appeals from its decisions shall be taken to the Supreme Court of this state within thirty (30) days of the date that a copy of the decision is mailed to the appellant, as shown by the certificate of mailing attached to the decision.

2. The license of any physician or surgeon who has been convicted of any felony in or without the State of Oklahoma and whether in a state or federal court, ~~and which conviction shall have become final, shall~~ may be suspended ~~or revoked and canceled~~ by the Board upon the submission thereto of a certified copy of the judgment and sentence of the trial court and the certificate of the

clerk of the court ~~that~~ of the conviction ~~has become final,~~
~~provided, that the revocation.~~

3. Upon proof of a final felony conviction by the courts and after exhaustion of the appellate process, the Board shall revoke the physician's license. If the felony conviction is overturned on appeal and no other appeals are sought, the Board shall restore the license of the physician. Suspension or revocation of the license of any person convicted of a felony on any other grounds than that of moral turpitude or the violation of the federal or state narcotic laws, shall be on the merits of the particular case, but the court records in the trial of such case when conviction has been had shall be prima facie evidence of the conviction.

4. The Board shall also revoke and cancel the license of any physician or surgeon who has been charged in a court of record of this or other states of the United States or in the federal court with the commission of a felony and who is a fugitive from justice, upon the submission of a certified copy of the charge together with a certificate from the clerk of the court that after the commitment of the crime the physician or surgeon fled from the jurisdiction of the court and is a fugitive from justice.

B. To the extent necessary to allow the Board the power to enforce disciplinary actions imposed by the Board, in the exercise of its authority, the Board may punish willful violations of its orders and impose additional penalties as allowed by Section ~~33~~ 509.1 of this ~~act~~ title.

SECTION 11. AMENDATORY 59 O.S. 2001, Section 638, is amended to read as follows:

Section 638. A. 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~~ felony:

1. The practice of osteopathic medicine or attempt to practice osteopathic medicine without a license issued by the State Board, and each visit, treatment, prescription, or attempted visit, treatment, or prescription shall constitute a separate and distinct offense;

2. Obtaining of, or attempting to obtain, a license under the provisions of this act, or obtaining, or attempting to obtain, money or any other thing of value, by fraudulent representation or false pretense;

3. Advertising as an osteopathic physician and surgeon, or practicing or attempting to practice osteopathic 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 an osteopathic 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 Osteopathic Medicine Act shall be deemed guilty of the felony of perjury, and upon conviction, shall be punished as prescribed by the general laws of this state.

SECTION 12. AMENDATORY 59 O.S. 2001, Section 3003, is amended to read as follows:

Section 3003. The Orthotics and Prosthetics Practice Act shall not apply to:

1. Persons licensed by this state as practitioners of the healing arts when engaging in the practice or practices for which licensed;

2. A person who is employed by the government of the United States or any entity thereof while in the discharge of the employee's assigned duties;

3. A student enrolled in a school of orthotics or prosthetics recognized by the Board of Medical Licensure and Supervision or a resident as defined by Section 2 3002 of this act title who is continuing clinical education;

4. A person licensed by this state as a physical therapist, occupational therapist, or physician assistant when engaging in the practice for which licensed; or

5. A person certified by the Board for Certification in Podorthotics when practicing podorthotics at the ankle or below; ~~or~~

~~6. Persons engaged in the practice of orthotics as an employee or authorized representative of an orthotics manufacturer with employment responsibilities that include, but are not limited to, one or more of the following: evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, training, repairing, replacing or delivering an orthotic device under the order, direction or prescription of a physician or healthcare provider operating within their licensed scope of practice.~~

SECTION 13. 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.

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