STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2376: Stanley

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 138, 156, 158, 159.1, 159.4, 159.5, 355, 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, 625 and 3003 (59 O.S. Supp. 2003, Sections 493.2 and 509.1), which relate to the Podiatric Medicine Practice Act, the Oklahoma Pharmacy Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, the Oklahoma Osteopathic Medicine Act, and the Orthotics and Prosthetics Practice Act; updating and clarifying language; clarifying provisions related to licensure revocation and suspension; clarifying type of special licenses; modifying measurement method for professional competency; limiting reinstatement for certain revocations; modifying definition of unprofessional or unethical conduct; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 138, is amended to read as follows:

Section 138. Nothing in ~~this act~~ the Podiatric Medicine Practice Act shall apply to any ~~medical doctor, osteopath,~~ allopathic or osteopathic physician or chiropractor licensed ~~as such~~ under the laws of this state~~, now or hereafter~~.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 156, is amended to read as follows:

Section 156. ~~Said~~ The Board of Podiatric Medical Examiners shall make an annual report to the Governor, not later than ~~the fifteenth day of~~ November 15 of each year~~, which~~. The report shall contain an account of all monies received, licenses issued,

suspended~~,~~ or revoked, and all expenditures made by ~~said~~ the Board during the twelve (12) months prior to ~~said~~ that date.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 158, is amended to read as follows:

Section 158. Restraining orders and temporary and permanent injunctions may be granted by the district ~~and superior~~ courts upon application of the Board of Podiatric Medical Examiners for the purpose of restraining, enjoining, ~~and~~ preventing threatened or likely violations of, ~~and also~~ enforcing, and ~~also~~ requiring compliance with~~,~~ the ~~applicable laws~~ Podiatric Medicine Practice Act.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 159.1, is amended to read as follows:

Section 159.1 A. The Board of Podiatric Medical Examiners may ~~adopt~~ promulgate rules ~~and regulations which are~~ necessary ~~or helpful~~ to promote the public health and safety ~~which~~ that define and establish minimum standards and requirements for methods and practices to be used in taking or making casts, or equivalents thereof, of the human foot, for the purpose of prescribing, offering, making, furnishing, correcting, changing, or fitting shoes for the foot.

B. It shall be unlawful to take or make ~~said~~ such casts or equivalents for any purpose except in accordance with such rules ~~and regulations~~ as the Board may prescribe.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 159.4, is amended to read as follows:

Section 159.4 Nothing in ~~this act~~ the Podiatric Medicine Practice Act shall apply to the manufacture or sale of shoes, pads, or supports, whether patented or not, ~~which~~ that are made for~~,~~ and offered to~~,~~ persons generally.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 159.5, is amended to read as follows:

Section 159.5 Any violation of ~~this act~~ the Podiatric Medicine Practice Act shall constitute a misdemeanor~~,~~ and shall be punishable upon conviction~~,~~ by a fine of not more than Five Hundred Dollars ($500.00) ~~or~~, imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment~~; and each~~. Each separate day upon which any person ~~unlawfully does a thing made unlawful by~~ violates the provisions of this act shall be and shall constitute a separate and distinct offense.

SECTION 7. 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 term 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~~ 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 8. 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 provisions of 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, and shall~~, upon conviction thereof~~, in any court having jurisdiction, be fined for:

a. the first offense ~~in any~~ a sum not less than One Thousand Dollars ($1,000.00), ~~and not~~ nor more than Five Thousand Dollars ($5,000.00), and ~~shall, for~~

b. any succeeding offense, ~~be subject to fine in like~~ the same 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 within 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 medicine and surgery services.

B. 1. If ~~the~~ a license has been revoked or suspended pursuant to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, whether for disciplinary reasons or because of lack of renewal, 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 that the person practices medicine and surgery ~~or~~ within 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 the provisions of subsection A of this section.

SECTION 9. 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~~ a 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 or 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.

SECTION 10. 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~~ an 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 ~~specially~~ special training licensed physician to impose additional practice limitations upon such physician.

SECTION 11. 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 evidence of professional competence 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 12. 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 13. 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 State Board of Medical Licensure and Supervision, such person whose license has been ~~so~~ revoked or suspended may file an application with the secretary of the Board, together with an application fee set by the Board, to reinstate ~~his~~ the license.

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.

SECTION 14. 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.~~ 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 other substance abuse 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, 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~~ paragraph 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 ~~on-going~~ 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 15. 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.

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~~ regarding 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 16. AMENDATORY 59 O.S. 2001, Section 625, is amended to read as follows:

Section 625. Each member of ~~said~~ the State Board ~~shall~~ of Osteopathic Examiners, before entering upon the duties of the office~~,~~:

1. Shall take the oath of office prescribed by the Constitution before someone qualified to administer oaths~~,~~; and ~~shall, except~~

2. Except for the lay person, shall make an oath that:

a. the member is a legally qualified practitioner of osteopathic medicine in this state~~;~~, and ~~that~~

b. the member has been engaged in the active practice of osteopathic medicine in this state for at least five (5) years preceding the appointment of such member.

SECTION 17. 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 State 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;

5. A person certified by the Board for Certification in Pedorthics when practicing pedorthics 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 18. This act shall become effective November 1, 2004.

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