

CS for SB 1014

THE STATE SENATE
Tuesday, March 1, 2005

Committee Substitute for
Senate Bill No. 1014

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1014 - By: MONSON of the Senate and SHUMATE of the House.

[public health and safety - Joint Legislative Task Force on Patient Safety - codification - noncodification - emergency]

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. Recognizing that physicians and health care facilities must play an active role in developing systems to improve patient safety and that actively working to improve patient care and reduce harm is in the best interest of the public, physicians and health care facilities, there is hereby recreated the Joint Legislative Task Force on Patient Safety. The purpose of the Task Force shall be:

1. To study the feasibility of legislative or regulatory efforts designed to improve patient safety that include, but need not be limited to:

- a. implementation of physician licensure requirements for risk management training,
- b. provision of premium discounts on malpractice insurance based on physician performance,

- 1 c. provision of partial subsidies of physicians' premiums
2 under various health plans, Medicaid and Medicare in
3 return for specific safety enhancements,
4 d. investment by physicians in tools such as electronic
5 prescribing aids and automated systems for tracking of
6 tests, and
7 e. improved collection and reporting of information on
8 patient safety in order to facilitate safety
9 improvement and physician involvement; and
10 2. To define the structure of an independent entity to
11 coordinate patient safety initiatives in this state. In defining
12 such structure, the task force shall incorporate the following
13 provisions into the functions of the independent entity:
14 a. creation of patient safety centers and financing
15 mechanisms,
16 b. development of purchasing incentives for state health
17 care purchasing,
18 c. appointment of patient safety officers,
19 d. use of information technology within facilities,
20 e. work force issues, and
21 f. establishment of risk management programs within
22 physician office practices and office surgery,

1 including a formal program of risk analysis, risk
2 criteria and risk education.

3 B. 1. The Task Force shall be composed of six members of the
4 Senate, appointed by the President Pro Tempore, and six members of
5 the House of Representatives, appointed by the Speaker.

6 2. In addition, the following directors shall serve on the Task
7 Force:

8 a. the Director of the Board of Medical Licensure and
9 Supervision,

10 b. the Director of the Oklahoma Board of Osteopathic
11 Examiners,

12 c. the Director of the Oklahoma Board of Nursing, and

13 d. the director of a statewide association representing
14 hospitals.

15 3. The President Pro Tempore shall appoint the chair of the
16 Task Force from among the Senate members and the Speaker shall
17 appoint the vice chair of the Task Force from among the House
18 members.

19 C. The chair of the Task Force shall convene the first meeting
20 of the Task Force.

21 D. Staffing for the Task Force shall be provided by the staffs
22 of the State Senate and the Oklahoma House of Representatives.

1 E. The Task Force shall issue a report of its findings to the
2 Legislature after which time the Task Force shall sunset.

3 SECTION 2. AMENDATORY 59 O.S. 2001, Section 504, is
4 amended to read as follows:

5 Section 504. All citations and subpoenas, under the
6 contemplation of this act, shall be served in general accordance
7 with the statutes of the State of Oklahoma then in force applying to
8 the service of such documents, and all provisions of the statutes of
9 the state then in force, relating to citations and subpoenas, are
10 hereby made applicable to the citations and subpoenas herein
11 provided for. In conducting investigations under this act, the
12 State Board of Medical Licensure and Supervision shall have the
13 power to issue document subpoenas for pharmacy, medical and hospital
14 records which shall carry the same force and effect as if issued as
15 an order from a district court of competent jurisdiction. Patient
16 confidentiality shall be maintained by the Board and subpoena
17 compliance shall not be considered a violation of any state or
18 federal confidentiality laws. All the provisions of the statutes of
19 the state, then in force, governing the taking of testimony by
20 depositions, are made applicable to the taking of depositions under
21 this act. The attendance of witnesses shall be compelled in such
22 hearings by subpoenas issued by the secretary of the ~~State Board of~~
23 ~~Medical Licensure and Supervision~~ over the seal thereof, and the

1 secretary shall in no case refuse to issue such subpoenas upon
2 praecipe filed therefor accompanied with the fee of Five Dollars
3 (\$5.00) for each subpoena issued. If any person refuse to obey such
4 subpoena served upon ~~him~~ the person in such manner, the fact of such
5 refusal shall be certified by the secretary of the Board, over the
6 seal thereof, to the district court of the county in which such
7 service was had, and the court shall proceed to hear ~~said~~ the matter
8 in accordance with the statutes of the state then in force governing
9 contempt as for disobedience of its own process.

10 SECTION 3. AMENDATORY 59 O.S. 2001, Section 512, as
11 amended by Section 5, Chapter 213, O.S.L. 2002 (59 O.S. Supp. 2004,
12 Section 512), is amended to read as follows:

13 Section 512. The secretary of the State Board of Medical
14 Licensure and Supervision shall be paid an annual salary in an
15 amount fixed by the Board. The Board shall have the authority to
16 expend such funds as are necessary in carrying out the duties of the
17 Board and shall have the authority to hire all necessary personnel,
18 at salaries to be fixed by the Board, as the Board shall deem
19 necessary. The Board shall have the authority to hire attorneys to
20 represent the Board in all legal matters and to assist authorized
21 state and county officers in prosecuting or restraining violations
22 of ~~Section 481 et seq. of this title~~ the Oklahoma Allopathic Medical

1 and Surgical Licensure and Supervision Act, and to fix the salaries
2 or per diem of ~~said~~ such attorneys.

3 The Board shall have the authority to hire one or more
4 investigators as may be necessary to carry out the provisions of
5 this act at an annual salary to be fixed by the Board. Such
6 investigators may be commissioned peace officers of this state. In
7 addition such investigators shall have the authority and duty to
8 investigate and inspect the records of all persons in order to
9 determine whether ~~or not~~ a disciplinary action for unprofessional
10 misconduct is warranted or to determine compliance with the narcotic
11 ~~laws or the dangerous drug~~ drugs laws ~~have been complied with of~~
12 this state.

13 The Board is specifically authorized to contract with state
14 agencies or other bodies to perform investigative services at a rate
15 set by the Board.

16 The Board is authorized to pay the travel expenses of Board
17 employees and members in accordance with the State Travel
18 Reimbursement Act.

19 The expenditures authorized herein shall not be a charge against
20 the state, but the same shall be paid solely from the Board's
21 depository fund.

1 SECTION 4. AMENDATORY 59 O.S. 2001, Section 567.8, as
2 amended by Section 5, Chapter 190, O.S.L. 2003 (59 O.S. Supp. 2004,
3 Section 567.8), is amended to read as follows:

4 Section 567.8 A. The Oklahoma Board of Nursing shall have the
5 power:

- 6 1. To deny, revoke or suspend any:
 - 7 a. license to practice registered nursing or licensed
8 practical nursing,
 - 9 b. recognition for practice as an advanced practice
10 nurse, or
 - 11 c. certification as an advanced unlicensed assistive
12 person;
- 13 2. To assess administrative penalties; or
- 14 3. To otherwise discipline a licensee or advanced unlicensed
15 assistive person.

16 B. The Board shall impose a disciplinary action pursuant to the
17 provisions of subsection A of this section upon proof that the
18 person:

- 19 1. Is guilty of fraud or deceit or material deception in
20 procuring or attempting to procure:
 - 21 a. a license to practice registered nursing, licensed
22 practical nursing, or recognition to practice advanced
23 practice nursing, or

1 b. certification as an advanced unlicensed assistive
2 person;

3 2. Is guilty of a felony, or any offense reasonably related to
4 the qualifications, functions or duties of any licensee or advanced
5 unlicensed assistant, or any offense an essential element of which
6 is fraud, dishonesty, or an act of violence, or for any offense
7 involving moral turpitude, whether or not sentence is imposed, or
8 any conduct resulting in the revocation of a deferred or suspended
9 sentence or probation imposed pursuant to such conviction;

10 3. Fails to adequately care for patients or to conform to the
11 minimum standards of acceptable nursing or advanced unlicensed
12 assistant practice that, in the opinion of the Board, unnecessarily
13 exposes a patient or other person to risk of harm;

14 4. Is intemperate in the use of alcohol or drugs, which use the
15 Board determines endangers or could endanger patients;

16 5. Exhibits through a pattern of practice or other behavior
17 actual or potential inability to practice nursing with sufficient
18 knowledge or reasonable skills and safety due to impairment caused
19 by illness, use of alcohol, drugs, chemicals or any other substance,
20 or as a result of any mental or physical condition, including
21 deterioration through the aging process or loss of motor skills,
22 mental illness, or disability that results in inability to practice
23 with reasonable judgment, skill or safety; provided, however, the

1 provisions of this paragraph shall not be utilized in a manner that
2 conflicts with the provisions of the Americans with Disabilities
3 Act;

4 6. Has been adjudicated as mentally incompetent, mentally ill,
5 chemically dependent or dangerous to the public or has been
6 committed by a court of competent jurisdiction, within or without
7 this state;

8 7. Is guilty of unprofessional conduct as defined in the rules
9 of the Board;

10 8. Is guilty of any act that jeopardizes a patient's life,
11 health or safety as defined in the rules of the Board;

12 9. Violated a rule promulgated by the Board, an order of the
13 Board, or a state or federal law relating to the practice of
14 registered, practical or advanced practice nursing or advanced
15 unlicensed assisting, or a state or federal narcotics or controlled
16 dangerous substance law; or

17 10. Has had disciplinary actions taken against the individual's
18 registered or practical nursing license, advanced unlicensed
19 assistive certification, or any health-related license, in this or
20 any state, territory or country.

21 C. Any person who supplies the Board information in good faith
22 shall not be liable in any way for damages with respect to giving
23 such information.

1 D. The Board may cause to be investigated all reported
2 violations of the Oklahoma Nursing Practice Act in order to
3 determine whether a disciplinary action for unprofessional
4 misconduct is warranted or to determine compliance with the
5 provisions of this act. In conducting investigations under this
6 act, the Board shall have the power to issue document subpoenas for
7 pharmacy, medical and hospital records which shall carry the same
8 force and effect as if issued as an order from a district court of
9 competent jurisdiction. Patient confidentiality shall be maintained
10 by the Board and subpoena compliance shall not be considered a
11 violation of any state or federal confidentiality laws.

12 E. The Board may authorize the executive director to issue a
13 confidential letter of concern to a licensee when evidence does not
14 warrant formal proceedings, but the executive director has noted
15 indications of possible errant conduct that could lead to serious
16 consequences and formal action.

17 F. All individual proceedings before the Board shall be
18 conducted in accordance with the Administrative Procedures Act.

19 G. At a hearing the accused shall have the right to appear
20 either personally or by counsel, or both, to produce witnesses and
21 evidence on behalf of the accused, to cross-examine witnesses and to
22 have subpoenas issued by the Board. If the accused is found guilty
23 of the charges the Board may refuse to issue a renewal of license to

1 the applicant, revoke or suspend a license, or otherwise discipline
2 a licensee.

3 H. A person whose license is revoked may not apply for
4 reinstatement during the time period set by the Board. The Board on
5 its own motion may at any time reconsider its action.

6 I. Any person whose license is revoked or who applies for
7 renewal of registration and who is rejected by the Board shall have
8 the right to appeal from such action pursuant to the Administrative
9 Procedures Act.

10 J. 1. Any person who has been determined by the Board to have
11 violated any provisions of the Oklahoma Nursing Practice Act or any
12 rule or order issued pursuant thereto shall be liable for an
13 administrative penalty not to exceed Five Hundred Dollars (\$500.00)
14 for each count for which any holder of a certificate or license has
15 been determined to be in violation of the Oklahoma Nursing Practice
16 Act or any rule promulgated or order issued thereto.

17 2. The amount of the penalty shall be assessed by the Board
18 pursuant to the provisions of this section, after notice and an
19 opportunity for hearing is given to the accused. In determining the
20 amount of the penalty, the Board shall include, but not be limited
21 to, consideration of the nature, circumstances, and gravity of the
22 violation and, with respect to the person found to have committed
23 the violation, the degree of culpability, the effect on ability of

1 the person to continue to practice, and any show of good faith in
2 attempting to achieve compliance with the provisions of the Oklahoma
3 Nursing Practice Act.

4 SECTION 5. AMENDATORY 59 O.S. 2001, Section 626, is
5 amended to read as follows:

6 Section 626. A. 1. The State Board of Osteopathic Examiners
7 shall, immediately after the members have qualified, elect a
8 president, vice-president and secretary-treasurer.

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

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

14 4. The secretary-treasurer shall keep a record of all
15 proceedings of the Board and perform such other duties as are
16 prescribed in the Oklahoma Osteopathic Medicine Act, or which may be
17 prescribed by said Board. It shall be the duty of the secretary-
18 treasurer to receive and care for all monies coming into the hands
19 of said Board, and to pay out the same upon orders of the Board.

20 B. The State Board and such employees as determined by the
21 Board shall be bonded as required by Sections 85.26 through 85.31 of
22 Title 74 of the Oklahoma Statutes.

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

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

6 2. An attorney, on a case-by-case basis, to represent the Board
7 in legal matters and to assist authorized state and county officers
8 in prosecuting or restraining violations of the provisions of the
9 Oklahoma Osteopathic Medicine Act. The Board shall fix the
10 compensation of said attorney; and

11 3. One or more investigators as may be necessary to implement
12 the provisions of the Oklahoma Osteopathic Medicine Act at an annual
13 salary to be fixed by the Board, and may authorize necessary
14 expenses. In addition, the investigators may investigate and
15 inspect the nonfinancial business records of all persons licensed
16 pursuant to the Oklahoma Osteopathic Medicine Act in order to
17 determine whether a disciplinary action for unprofessional
18 misconduct is warranted or ~~not~~ to determine whether licensees are in
19 compliance with the Oklahoma Osteopathic Medicine Act and the
20 Uniform Controlled Dangerous Substances Act or any other law, rule
21 of the State of Oklahoma or any federal law or rule affecting the
22 practice of osteopathic medicine. In conducting investigations
23 under this act, the Board shall have the power to issue document

1 subpoenas for pharmacy, medical and hospital records which shall
2 carry the same force and effect as if issued as an order from a
3 district court of competent jurisdiction. Patient confidentiality
4 shall be maintained by the Board and subpoena compliance shall not
5 be considered a violation of any state or federal confidentiality
6 laws.

7 D. Any licensee or applicant for license subject to the
8 provisions of the Oklahoma Osteopathic Medicine Act shall be deemed
9 to have given consent to any duly authorized employee or agent of
10 the Board to access, enter, or inspect the records, either on-site
11 or at the Board office, or facilities of such licensee or applicant
12 subject to the Oklahoma Osteopathic Medicine Act. Refusal to allow
13 such access, entry, or inspection may constitute grounds for the
14 denial, nonrenewal, suspension, or revocation of a license. Upon
15 refusal of such access, entry, or inspection, pursuant to this
16 section, the Board or a duly authorized representative may make
17 application for and obtain a search warrant from the district court
18 where the facility or records are located to allow such access,
19 entry, or inspection.

20 SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as
21 last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.
22 2004, Section 1-1709.1), is amended to read as follows:

23 Section 1-1709.1 A. As used in this section:

- 1 1. "Credentialing or recredentialing data" means:
- 2 a. the application submitted by a health care
- 3 professional requesting appointment or reappointment
- 4 to the medical staff of a health care facility or
- 5 requesting clinical privileges or other permission to
- 6 provide health care services at a health care
- 7 facility,
- 8 b. any information submitted by the health care
- 9 professional in support of such application,
- 10 c. any information, unless otherwise privileged, obtained
- 11 by the health care facility during the credentialing
- 12 or recredentialing process regarding such application,
- 13 and
- 14 d. the decision made by the health care facility
- 15 regarding such application;
- 16 2. "Credentialing or recredentialing process" means any
- 17 process, program or proceeding utilized by a health care facility to
- 18 assess, review, study or evaluate the credentials of a health care
- 19 professional;
- 20 3. "Health care facility" means:
- 21 a. any hospital or related institution offering or
- 22 providing health care services under a license issued
- 23 pursuant to Section 1-706 of this title,

1 b. any ambulatory surgical center offering or providing
2 health care services under a license issued pursuant
3 to Section 2660 of this title, and

4 c. the clinical practices of accredited allopathic and
5 osteopathic state medical schools;

6 4. "Health care professional" means any person authorized to
7 practice allopathic medicine and surgery, osteopathic medicine,
8 podiatric medicine, optometry, chiropractic, psychology, dentistry
9 or a dental specialty under a license issued pursuant to Title 59 of
10 the Oklahoma Statutes;

11 5. "Peer review information" means all records, documents and
12 other information generated during the course of a peer review
13 process, including any reports, statements, memoranda,
14 correspondence, record of proceedings, materials, opinions,
15 findings, conclusions and recommendations, but does not include:

- 16 a. the medical records of a patient whose health care in
17 a health care facility is being reviewed,
18 b. incident reports and other like documents regarding
19 health care services being reviewed, regardless of how
20 the reports or documents are titled or captioned,
21 c. the identity of any individuals who have personal
22 knowledge regarding the facts and circumstances

1 surrounding the patient's health care in the health
2 care facility,

3 d. factual statements regarding the patient's health care
4 in the health care facility from any individuals who
5 have personal knowledge regarding the facts and
6 circumstances surrounding the patient's health care,
7 which factual statements were generated outside the
8 peer review process,

9 e. the identity of all documents and raw data previously
10 created elsewhere and considered during the peer
11 review process,

12 f. copies of all documents and raw data previously
13 created elsewhere and considered during the peer
14 review process, whether available elsewhere or not, or
15 g. credentialing or recredentialing data regarding the
16 health care professional who provided the health care
17 services being reviewed or who is the subject of a
18 credentialing or recredentialing process; and

19 6. "Peer review process" means any process, program or
20 proceeding, including a credentialing or recredentialing process,
21 utilized by a health care facility or county medical society to
22 assess, review, study or evaluate the credentials, competence,

1 professional conduct or health care services of a health care
2 professional.

3 B. 1. Peer review information shall be private, confidential
4 and privileged:

5 a. except that a health care facility or county medical
6 society shall be permitted to provide relevant peer
7 review information to the state agency or board which
8 licensed the health care professional who provided the
9 health care services being reviewed in a peer review
10 process or who is the subject of a credentialing or
11 recredentialing process, with notice to the health
12 care professional, ~~and~~

13 b. except as provided in subsections C and D of this
14 section, and

15 c. except that no person involved in the peer review
16 process who has a responsibility to report adverse
17 privileging actions shall be subject to civil
18 liability.

19 2. Nothing in this section shall be construed to abrogate,
20 alter or affect any provision in the Oklahoma Statutes which
21 provides that information regarding liability insurance of a health
22 care facility or health care professional is not discoverable or
23 admissible.

1 C. In any civil action in which a patient or patient's legal
2 representative has alleged that the patient has suffered injuries
3 resulting from negligence by a health care professional in providing
4 health care services to the patient in a health care facility,
5 factual statements, presented during a peer review process utilized
6 by such health care facility, regarding the patient's health care in
7 the health care facility from individuals who have personal
8 knowledge of the facts and circumstances surrounding the patient's
9 health care shall be subject to discovery, pursuant to the Oklahoma
10 Discovery Code, upon an affirmative showing that such statements are
11 not otherwise available in any other manner.

12 D. 1. In any civil action in which a patient or patient's
13 legal representative has alleged:

14 a. that the patient has suffered injuries resulting from
15 negligence by a health care professional in providing
16 health care services to the patient in a health care
17 facility, or

18 b. that the health care facility was independently
19 negligent as a result of permitting the health care
20 professional to provide health care services to the
21 patient in the health care facility,

22 the recommendations made and action taken as a result of any
23 peer review process utilized by such health care facility regarding

1 the health care professional prior to the date of the alleged
2 negligence shall be subject to discovery pursuant to the Oklahoma
3 Discovery Code.

- 4 2. Any information discovered pursuant to this subsection :
- 5 a. shall not be admissible as evidence until a judge or
6 jury has found the health care professional to have
7 been negligent in providing health care services to
8 the patient in such health care facility, and
 - 9 b. shall not at any time include the identity or means by
10 which to ascertain the identity of any other patient
11 or health care professional.

12 E. No person involved in a peer review process may be permitted
13 or required to testify regarding the peer review process in any
14 civil proceeding or disclose by responses to written discovery
15 requests any peer review information.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 101.1a of Title 20, unless there
18 is created a duplication in numbering, reads as follows:

19 The judge of a district court shall report to the appropriate
20 licensing board a doctor's or licensed nurse's guilty plea, no
21 contest plea or conviction for conduct that affects the doctor's or
22 licensed nurse's professional practice or moral character.

1 SECTION 8. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated
6 2-24-05 - DO PASS, As Amended and Coauthored.