

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2732

By: Renegar of the House

and

Gumm and Leftwich of the
Senate

8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to professions and occupations;
11 amending 59 O.S. 2001, Section 328.49, as amended by
12 Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp.
13 2007, Section 328.49), which relates to dentistry;
14 increasing and expanding penalties for unlawful
15 practice; amending 59 O.S. 2001, Section 491, as
16 amended by Section 3, Chapter 523, O.S.L. 2004 (59
17 O.S. Supp. 2007, Section 491), which relates to the
18 practice of medicine or surgery; increasing and
19 expanding penalties for practicing without a license;
20 amending 59 O.S. 2001, Section 638, as amended by
21 Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp.
22 2007, Section 638), which relates to the Oklahoma
23 Osteopathic Medicine Act; increasing penalty for
24 violation; amending 59 O.S. 2001, Section 698.18,
which relates to veterinary medicine; modifying
penalties for practicing or attempting to practice
veterinary medicine without a license; amending 59
O.S. 2001, Section 698.26, as amended by Section 7,
Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007, Section
698.26), which relates to the unauthorized practice
of veterinary medicine; providing penalty for the
unauthorized use of certain titles; modifying penalty
for permitting or directing violation; establishing
medical battery as a felony; defining term; providing
for codification; and providing an effective date.

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

2 SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.49, as
3 amended by Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2007,
4 Section 328.49), is amended to read as follows:

5 Section 328.49 A. The Board of Dentistry shall be responsible
6 for the enforcement of the provisions of the State Dental Act
7 against all persons who are in violation thereof, including, but not
8 limited to, individuals who ~~are practicing~~ practice or ~~attempting~~
9 attempt to practice dentistry or dental hygiene without proper
10 authorization from the Board.

11 B. 1. It shall be unlawful for any person, except a licensed
12 dentist, to:

- 13 a. practice or attempt to practice dentistry,
14 b. hold oneself out to the public as a dentist or as a
15 person who practices dentistry, or
16 c. employ or use the words "Doctor" or "Dentist", or the
17 letters "D.D.S." or "D.M.D.", or any modification or
18 derivative thereof, when such use is intended to give
19 the impression that the person is a dentist.

20 2. It shall be unlawful for any person, except a registered
21 dental hygienist, to:

- 22 a. practice or attempt to practice dental hygiene,
23 b. hold oneself out to the public as a dental hygienist
24 or as a person who practices dental hygiene, or

1 c. employ or use the words "Registered Dental Hygienist",
2 or the letters "R.D.H.", or any modification or
3 derivative thereof, when such use is intended to give
4 the impression that the person is a dental hygienist.

5 3. It shall be unlawful for any person to:

6 a. give false or fraudulent evidence or information to
7 the Board in an attempt to obtain any license or
8 permit from the Board, or

9 b. aid or abet another person in violation of ~~this~~
10 ~~subsection~~ the State Dental Act.

11 4. Each day ~~of~~ a person is in violation of any provision of
12 this subsection shall constitute a separate and distinct criminal
13 offense and, in addition, the district attorney may file a separate
14 charge of medical battery for each person who is injured as a result
15 of treatment performed in violation of this subsection.

16 C. 1. If a person violates any of the provisions of subsection
17 B of this section, the Board ~~may~~ shall request ~~that~~ the district
18 attorney of the county in which ~~such~~ the violation is ~~believed~~
19 alleged to have occurred to bring a criminal action in that county
20 against the person. A duplicate copy of the Board's request shall
21 be sent to the Attorney General of this state.

22 2. Any person who violates any of the provisions of paragraph 1
23 or 3 of subsection B of this section, upon conviction ~~thereof~~, shall
24 be guilty of a ~~misdemeanor and shall be punished as follows:~~

- 1 a. ~~for a first offense, felony punishable by a fine of in~~
2 ~~an amount not less than Five Hundred Dollars (\$500.00)~~
3 ~~One Thousand Dollars (\$1,000.00) nor more than One~~
4 ~~Thousand Five Hundred Dollars (\$1,500.00) Ten Thousand~~
5 ~~Dollars (\$10,000.00), or by imprisonment in the county~~
6 ~~jail for a term of not more than thirty (30) days one~~
7 ~~(1) year or imprisonment in the custody of the~~
8 ~~Department of Corrections for a term of not more than~~
9 ~~four (4) years, or by both such fine and imprisonment,~~
- 10 b. ~~for a second offense, by a fine of not less than One~~
11 ~~Thousand Five Hundred Dollars (\$1,500.00) nor more~~
12 ~~than Two Thousand Five Hundred Dollars (\$2,500.00), or~~
13 ~~by imprisonment in the county jail for not more than~~
14 ~~ninety (90) days, or by both such fine and~~
15 ~~imprisonment, or~~
- 16 c. ~~for a third or subsequent offense, by a fine of not~~
17 ~~less than Two Thousand Five Hundred Dollars~~
18 ~~(\$2,500.00) nor more than Five Thousand Dollars~~
19 ~~(\$5,000.00), or by imprisonment in the county jail for~~
20 ~~not more than one hundred eighty (180) days, or by~~
21 ~~both such fine and imprisonment.~~

22 Any person who violates any of the provisions of paragraph 2 of
23 subsection B of this section, upon conviction, shall be guilty of a
24 misdemeanor punishable by a fine in an amount not less than Five

1 Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred
2 Dollars (\$2,500.00), or by imprisonment in the county jail for a
3 term of not more than ninety (90) days, or by both such fine and
4 imprisonment. Any second or subsequent violation of paragraph 2 of
5 subsection B of this section, upon conviction, shall be a felony
6 punishable by a fine in an amount not less than One Thousand Five
7 Hundred Dollars (\$1,500.00) nor more than Five Thousand Dollars
8 (\$5,000.00), or by imprisonment in the county jail for a term of not
9 more than one (1) year or imprisonment in the custody of the
10 Department of Corrections for a term of not more than two (2) years,
11 or by both such fine and imprisonment.

12 D. The Board may initiate a civil action, pursuant to Chapter
13 24 of Title 12 of the Oklahoma Statutes, seeking a temporary
14 restraining order or injunction, without bond, commanding a person
15 to refrain from engaging in conduct which constitutes a violation of
16 any of the provisions of subsection B of this section. In ~~an~~ a
17 civil action filed pursuant to this subsection, the prevailing party
18 shall be entitled to recover costs and reasonable attorney fees.

19 E. In addition to any other penalties provided herein, any
20 person found guilty of contempt of court by reason of the violation
21 of any injunction prohibiting the unlicensed practice of dentistry
22 now in effect or hereafter entered pursuant to any provision of the
23 State Dental Act or any preceding state dental act, shall be
24 punished by imprisonment in the county jail for a term of not less

1 than thirty (30) days nor more than one (1) year, and by a fine of
2 not less than Five Hundred Dollars (\$500.00) nor more than One
3 Thousand Dollars (\$1,000.00). The court may also require the
4 defendant to furnish a good and sufficient bond in a penal sum to be
5 set by the court, not less than One Thousand Dollars (\$1,000.00),
6 which shall be conditioned upon future compliance in all particulars
7 with the injunction entered, and in the event of failure of the
8 defendant to furnish such bond when so ordered, the defendant shall
9 be confined in the county jail pending compliance therewith. Such
10 bond shall be mandatory as to any person hereafter found guilty of a
11 second contempt of court for violation of any injunction entered
12 pursuant to the State Dental Act, or any preceding state dental act.

13 SECTION 2. AMENDATORY 59 O.S. 2001, Section 491, as
14 amended by Section 3, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007,
15 Section 491), is amended to read as follows:

16 Section 491. A. 1. Every person before practicing medicine
17 and surgery or any of the branches or departments of medicine and
18 surgery, within the meaning of the Oklahoma Allopathic Medical and
19 Surgical Licensure and Supervision Act, within this state, must be
20 in legal possession of the unrevoked license or certificate issued
21 pursuant to the Oklahoma Allopathic Medical and Surgical Licensure
22 and Supervision Act.

23 2. Any person practicing in such manner within this state, who
24 is not in the legal possession of ~~such~~ a license or certificate,

1 shall, upon conviction thereof, be guilty of a felony, and shall, in
2 any court having jurisdiction, be fined for:

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

6 b. ~~any succeeding offense, as provided in subparagraph a~~
7 ~~of this paragraph, and in addition thereto, be~~
8 ~~imprisoned in a county jail for a period of time of~~
9 ~~not less than thirty (30) days, nor more than one~~
10 ~~hundred eighty (180) days~~

11 punishable by a fine in an amount not less than One Thousand Dollars
12 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
13 imprisonment in the county jail for a term of not more than one (1)
14 year or imprisonment in the custody of the Department of Corrections
15 for a term of not more than four (4) years, or by both such fine and
16 imprisonment.

17 3. ~~In all instances, each day's practice~~ Each day a person is
18 in violation of any provision of this subsection shall constitute a
19 separate ~~and distinct~~ criminal offense and, in addition, the
20 district attorney may file a separate charge of medical battery for
21 each person who is injured as a result of treatment or surgery
22 performed in violation of this subsection.

23 4. Any person who practices medicine and surgery or any of the
24 branches or departments thereof without first complying with the

1 provisions of the Oklahoma Allopathic Medical and Surgical Licensure
2 and Supervision Act shall, in addition to the other penalties
3 provided therein, receive no compensation for such medical and
4 surgical or branches or departments thereof services.

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

15 2. Fines assessed shall be in addition to any criminal penalty
16 provided pursuant to subsection A of this section.

17 SECTION 3. AMENDATORY 59 O.S. 2001, Section 638, as
18 amended by Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007,
19 Section 638), is amended to read as follows:

20 Section 638. A. Each of the following acts shall constitute a
21 felony, punishable, upon conviction, by a fine of not less than One
22 Thousand Dollars (\$1,000.00) nor more than ~~Five Thousand Dollars~~
23 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) or by imprisonment in
24 the county jail for a term of not ~~less than ninety (90) days nor~~

1 more than one (1) year or imprisonment in the custody of the
2 Department of Corrections for a term of not more than four (4)
3 years, or by both such fine and imprisonment:

4 1. The practice of osteopathic medicine or attempt to practice
5 osteopathic medicine without a license issued by the State Board of
6 Osteopathic Examiners, ~~and each visit, treatment, prescription, or~~
7 ~~attempted visit, treatment, or prescription shall constitute a~~
8 ~~separate and distinct offense;~~

9 2. Obtaining ~~of~~, or attempting to obtain, a license under the
10 ~~provisions of this act, or obtaining,~~ Oklahoma Osteopathic Medicine
11 Act by fraud or false statements;

12 3. Obtaining, or attempting to obtain, money or any other thing
13 of value, by fraudulent representation or false pretense;

14 ~~3.~~ 4. Advertising as an osteopathic physician and surgeon, or
15 practicing or attempting to practice osteopathic medicine under a
16 false, assumed, or fictitious name, or a name other than the real
17 name; or

18 ~~4.~~ 5. Allowing any person in the licensee's employment or
19 control to practice as an osteopathic physician and surgeon when not
20 actually licensed to do so.

21 B. Each day a person is in violation of any provision of
22 subsection A of this section shall constitute a separate criminal
23 offense and, in addition, the district attorney may file a separate
24 charge of medical battery for each person who is injured as a result

1 of treatment or surgery performed in violation of subsection A of
2 this section.

3 C. Any person making any willfully false oath or affirmation
4 whenever oath or affirmation is required by the Oklahoma Osteopathic
5 Medicine Act shall be deemed guilty of the felony of perjury, and
6 upon conviction, shall be punished as prescribed by the general laws
7 of this state.

8 SECTION 4. AMENDATORY 59 O.S. 2001, Section 698.18, is
9 amended to read as follows:

10 Section 698.18 A. It shall be unlawful for any person to
11 practice or attempt to practice veterinary medicine without a
12 current license or certificate issued pursuant to the Oklahoma
13 Veterinary Practice Act, or to knowingly aid or abet another person
14 in the unlicensed practice or attempted practice of veterinary
15 medicine in this state.

16 B. Any person who violates, ~~aids or abets in violating~~ any of
17 the provisions of ~~the Oklahoma Veterinary Practice Act shall be~~
18 ~~deemed guilty of a misdemeanor and~~ subsection A of this section
19 shall, upon conviction thereof shall be punished, be guilty of a
20 felony punishable by a fine of in an amount not less than Five
21 Hundred Dollars (\$500.00) or not One Thousand Dollars (\$1,000.00),
22 nor more than Two Thousand Five Hundred Dollars (\$2,500.00) Ten
23 Thousand Dollars (\$10,000.00), or by imprisonment in the county jail
24 for a term of not less than thirty (30) days, nor more than six (6)

1 ~~months~~ one (1) year or imprisonment in the custody of the Department
2 of Corrections for a term of not more than four (4) years, or by
3 both such fine and imprisonment.

4 SECTION 5. AMENDATORY 59 O.S. 2001, Section 698.26, as
5 amended by Section 7, Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007,
6 Section 698.26), is amended to read as follows:

7 Section 698.26 A. A It is unlawful for a registered veterinary
8 technician, veterinary technologist, nurse, veterinary assistant or
9 other employee ~~shall not~~ to diagnose animal diseases, prescribe
10 medical or surgical treatment, or perform as a surgeon and such acts
11 shall constitute the unlawful practice of veterinary medicine as
12 prohibited in Section 698.18 of this title.

13 B. It is unlawful for any person to assume the title of
14 registered veterinary technician, or the abbreviation RVT, or any
15 other words, letters, signs, or figures that might induce a person
16 to believe that the person using the name is a registered veterinary
17 technician, when in fact such person is not certified.

18 C. A registered veterinary technician may perform emergency
19 treatments in a life saving situation in accordance with rules
20 promulgated by the Board.

21 ~~C.—Any~~ D. Except as provided in Section 698.18 of this title,
22 any person certified as a veterinary technician, veterinary
23 technologist, veterinary nurse, or veterinary assistant who
24 practices veterinary medicine contrary to the provisions of the

1 Oklahoma Veterinary Practice Act, ~~violates,~~ or any person who aids,
2 or abets such actions another in the practice or attempted practice
3 as a veterinary technician, veterinary technologist, veterinary
4 nurse, or veterinary assistant without license or certification, or
5 any person violating any provision of subsection B of this section,
6 upon conviction thereof, shall be guilty of a misdemeanor and
7 punishable by a fine of not less than Five Hundred Dollars (\$500.00)
8 nor more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
9 imprisonment in the county jail for a term of not less than thirty
10 (30) days, nor more than six (6) months, or by both such fine and
11 imprisonment. In addition to criminal penalties, the violator shall
12 also be subject to denial, revocation, suspension, probation or
13 nonrenewal of certification by the Board. Any person who assumes
14 the title of registered veterinary technician, or the abbreviation
15 RVT, or any other words, letters, signs, or figures that might
16 induce a person to believe that the person using the name is a
17 registered veterinary technician, when in fact they are not
18 certified, upon conviction thereof shall be guilty of a misdemeanor.

19 D. E. The penalties provided in subsection C D of this section
20 shall not apply to a student enrolled in an accredited school of
21 veterinary technology while the student is under the supervision of
22 an instructor and is performing activities required as a part of the
23 student's training.

24

1 ~~E. F.~~ Any ~~licensed~~ veterinarian licensed in this state who
2 ~~permitting permits~~ or ~~directing directs~~ a veterinary technician,
3 veterinary technologist, veterinary nurse, aide or animal attendant
4 to perform a task or procedure in violation of the provisions of the
5 Oklahoma Veterinary Practice Act, upon conviction ~~thereof~~, shall be
6 guilty of ~~a misdemeanor~~ aiding or abetting the unlicensed practice
7 of veterinary medicine as prohibited by Section 698.18 of this
8 title, and shall also be, in addition to any criminal penalties,
9 subject to revocation, probation, nonrenewal or suspension of
10 license by the Board.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 650.11 of Title 21, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Medical battery is a felony, upon conviction, punishable by
15 imprisonment in the county jail for a term of not more than one (1)
16 year, or imprisonment in the custody of the Department of
17 Corrections for a term of not more than four (4) years, and a fine
18 in an amount not more than Five Thousand Dollars (\$5,000.00). In
19 addition, the defendant shall be ordered to make restitution to the
20 victim in an amount as determined by the court.

21 B. For purposes of this section, "medical battery" means:

22 1. The defendant has been found guilty of practicing dentistry,
23 medicine, osteopathic medicine, or surgery, without a license or
24 authority as prohibited by the provisions of the State Dental Act,

1 the Oklahoma Allopathic Medical and Surgical Licensure and
2 Supervision Act, or the Oklahoma Osteopathic Medicine Act;

3 2. The treatment, or course of treatment, practiced in
4 violation of the provisions of the State Dental Act, the Oklahoma
5 Allopathic Medical and Surgical Licensure and Supervision Act, or
6 the Osteopathic Medicine Act resulted in the victim having permanent
7 physical injury or disfigurement;

8 3. The victim consented to such treatment, or course of
9 treatment, under a belief that the defendant was licensed and
10 authorized to diagnose and perform the treatment; and

11 4. The defendant willfully performed the act knowing that such
12 act was prohibited pursuant to law.

13 SECTION 7. This act shall become effective November 1, 2008.

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