

THE STATE SENATE
Monday, April 7, 2008

Committee Substitute for
ENGROSSED

House Bill No. 2732

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2732 - By: Renegar of the House and Gumm and Leftwich of the Senate.

[professions and occupations - dentistry - increasing penalty for unlawful practice - effective date]

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

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

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

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

- a. practice or attempt to practice dentistry,
- b. hold oneself out to the public as a dentist or as a person who practices dentistry, or

1 c. employ or use the words "Doctor" or "Dentist", or the
2 letters "D.D.S." or "D.M.D.", or any modification or
3 derivative thereof, when such use is intended to give
4 the impression that the person is a dentist.

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

7 a. practice or attempt to practice dental hygiene,

8 b. hold oneself out to the public as a dental hygienist
9 or as a person who practices dental hygiene, or

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

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

15 a. give false or fraudulent evidence or information to
16 the Board in an attempt to obtain any license or
17 permit from the Board, or

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

20 4. Each day ~~of~~ a person is in violation of any provision of
21 this subsection shall constitute a separate and distinct criminal
22 offense and, in addition, the district attorney may file a separate

1 charge of medical battery for each person who is injured as a result
2 of treatment performed in violation of this subsection.

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

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

12 a. ~~for a first offense, felony punishable by a fine of in~~
13 an amount not less than ~~Five Hundred Dollars (\$500.00)~~
14 One Thousand Dollars (\$1,000.00) nor more than ~~One~~
15 ~~Thousand Five Hundred Dollars (\$1,500.00)~~ Ten Thousand
16 Dollars (\$10,000.00), or by imprisonment in the county
17 jail for a term not more than ~~thirty (30) days~~ one (1)
18 year or imprisonment in the custody of the Department
19 of Corrections for not more than four (4) years, or by
20 both such fine and imprisonment,

21 b. ~~for a second offense, by a fine of not less than One~~
22 ~~Thousand Five Hundred Dollars (\$1,500.00) nor more~~
23 ~~than Two Thousand Five Hundred Dollars (\$2,500.00), or~~

1 ~~by imprisonment in the county jail for not more than~~
2 ~~ninety (90) days, or by both such fine and~~
3 ~~imprisonment, or~~
4 e. ~~for a third or subsequent offense, by a fine of not~~
5 ~~less than Two Thousand Five Hundred Dollars~~
6 ~~(\$2,500.00) nor more than Five Thousand Dollars~~
7 ~~(\$5,000.00), or by imprisonment in the county jail for~~
8 ~~not more than one hundred eighty (180) days, or by~~
9 ~~both such fine and imprisonment.~~ Any person who
10 violates any of the provisions of paragraph 2 of
11 subsection B of this section, upon conviction, shall
12 be guilty of a misdemeanor punishable by a fine in an
13 amount not less than Five Hundred Dollars (\$500.00)
14 nor more than Two Thousand Five Hundred Dollars
15 (\$2,500.00), or by imprisonment in the county jail for
16 a term not more than ninety (90) days, or by both such
17 fine and imprisonment. Any second or subsequent
18 violation of paragraph 2 of subsection B of this
19 section, upon conviction, shall be a felony punishable
20 by a fine in an amount not less than One Thousand Five
21 Hundred Dollars (\$1,500.00) nor more than Five
22 Thousand Dollars (\$5,000.00), or by imprisonment in
23 the county jail for a term not more than one (1) year

1 or imprisonment in the custody of the Department of
2 Corrections for not more than two (2) years, or by
3 both such fine and imprisonment.

4 D. The Board may initiate a civil action, pursuant to Chapter
5 24 of Title 12 of the Oklahoma Statutes, seeking a temporary
6 restraining order or injunction, without bond, commanding a person
7 to refrain from engaging in conduct which constitutes a violation of
8 any of the provisions of subsection B of this section. In ~~an~~ a
9 civil action filed pursuant to this subsection, the prevailing party
10 shall be entitled to recover costs and reasonable attorney fees.

11 E. In addition to any other penalties provided herein, any
12 person found guilty of contempt of court by reason of the violation
13 of any injunction prohibiting the unlicensed practice of dentistry
14 now in effect or hereafter entered pursuant to any provision of the
15 State Dental Act or any preceding state dental act, shall be
16 punished by imprisonment in the county jail for a term not less than
17 thirty (30) days nor more than one (1) year, and by a fine of not
18 less than Five Hundred Dollars (\$500.00) nor more than One Thousand
19 Dollars (\$1,000.00). The court may also require the defendant to
20 furnish a good and sufficient bond in a penal sum to be set by the
21 court, not less than One Thousand Dollars (\$1,000.00), which shall
22 be conditioned upon future compliance in all particulars with the
23 injunction entered, and in the event of failure of the defendant to

1 furnish such bond when so ordered, the defendant shall be confined
2 in the county jail pending compliance therewith. Such bond shall be
3 mandatory as to any person hereafter found guilty of a second
4 contempt of court for violation of any injunction entered pursuant
5 to the State Dental Act, or any preceding state dental act.

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

9 Section 491. A. 1. Every person before practicing medicine
10 and surgery or any of the branches or departments of medicine and
11 surgery, within the meaning of the Oklahoma Allopathic Medical and
12 Surgical Licensure and Supervision Act, within this state, must be
13 in legal possession of the unrevoked license or certificate issued
14 pursuant to the Oklahoma Allopathic Medical and Surgical Licensure
15 and Supervision Act.

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

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

1 ~~b. any succeeding offense, as provided in subparagraph a~~
2 ~~of this paragraph, and in addition thereto, be~~
3 ~~imprisoned in a county jail for a period of time of~~
4 ~~not less than thirty (30) days, nor more than one~~
5 ~~hundred eighty (180) days~~
6 punishable by a fine in an amount not less than One Thousand Dollars
7 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
8 imprisonment in the county jail for a term not more than one (1)
9 year or imprisonment in the custody of the Department of Corrections
10 for not more than four (4) years, or by both such fine and
11 imprisonment.

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

18 4. Any person who practices medicine and surgery or any of the
19 branches or departments thereof without first complying with the
20 provisions of the Oklahoma Allopathic Medical and Surgical Licensure
21 and Supervision Act shall, in addition to the other penalties
22 provided therein, receive no compensation for such medical and
23 surgical or branches or departments thereof services.

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

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

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

16 Section 638. A. Each of the following acts shall constitute a
17 felony, punishable, upon conviction, by a fine of not less than One
18 Thousand Dollars (\$1,000.00) nor more than ~~Five Thousand Dollars~~
19 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or by imprisonment in
20 the county jail for not ~~less than ninety (90) days nor~~ more than one
21 (1) year or imprisonment in the custody of they Department of
22 Corrections for not more than four (4) years, or by both such fine
23 and imprisonment:

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

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

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

11 ~~3.~~ 4. Advertising as an osteopathic physician and surgeon, or
12 practicing or attempting to practice osteopathic medicine under a
13 false, assumed, or fictitious name, or a name other than the real
14 name; or

15 ~~4.~~ 5. Allowing any person in the licensee's employment or
16 control to practice as an osteopathic physician and surgeon when not
17 actually licensed to do so.

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

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

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

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

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

1 (\$10,000.00), or by imprisonment in the county jail for a term not
2 more than one (1) year or imprisonment in the custody of the
3 Department of Corrections for not more than four (4) years, or by
4 both such fine and imprisonment.

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

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

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

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

22 ~~E. Any~~ D. Except as provided in Section 698.18 of this title,
23 any person certified as a veterinary technician, veterinary

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

21 ~~D.~~ E. The penalties provided in subsection ~~E~~ D of this section
22 shall not apply to a student enrolled in an accredited school of
23 veterinary technology while the student is under the supervision of

1 an instructor and is performing activities required as a part of the
2 student's training.

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

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

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

23 For purposes of this section medical battery means:

1 1. The defendant has been found guilty of practicing dentistry,
2 medicine, osteopathic medicine, or surgery, without a license or
3 authority as prohibited by the provisions of the State Dental Act,
4 the Oklahoma Allopathic Medical and Surgical Licensure and
5 Supervision Act, or the Oklahoma Osteopathic Medicine Act;

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

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

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-2-08 - DO
18 PASS, As Amended and Coauthored.