STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1897 By: Cox

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; creating the Allied Professional Peer Assistance Program; stating purpose; providing for powers and duties of the Board; providing for fees; providing for placement of funds; providing for records and management; providing for immunity; providing for suspension of license; requiring certain information to be confidential; defining terms; amending 59 O.S. 2001, Sections 493.2, as last amended by Section 4, Chapter 523, O.S.L. 2004, 493.3, 506, 509, as amended by Section 9, Chapter 523, O.S.L. 2004, 509.1, as last amended by Section 10, Chapter 523, O.S.L. 2004 and 3006 (59 O.S. Supp. 2008, Sections 493.2, 509 and 509.1), which relate to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and the Orthotics and Prosthetics Practice Act; modifying the requirements of licensure for certain persons; modifying requirements for issuance of certain license; modifying authority for suspension of license; modifying definition of unprofessional conduct; modifying disciplinary actions; authorizing Board to issue temporary license; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 518.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the Allied Professional Peer Assistance Program to rehabilitate allied medical professionals whose competency may be compromised because of the abuse of drugs or

alcohol, so that such allied medical professionals can be treated and can return to or continue the practice of allied medical practice in a manner which will benefit the public. The program shall be under the supervision and control of the Oklahoma Board of Medical Licensure and Supervision.

B. The Board shall appoint one or more peer assistance evaluation advisory committees, hereinafter called the "allied peer assistance committees". Each of these committees shall be composed of members, the majority of which shall be licensed allied medical professionals with expertise in chemical dependency. The allied peer assistance committees shall function under the authority of the Oklahoma Board of Medical Licensure and Supervision in accordance with the rules of the Board. The program may be one hundred percent (100%) outsourced to professional groups specialized in this arena. The committee members shall serve without pay, but may be reimbursed for the expenses incurred in the discharge of their official duties in accordance with the State Travel Reimbursement Act.

C. The Board shall appoint and employ a qualified person or persons to serve as program coordinators and shall fix such person's compensation. The Board shall define the duties of the program coordinators who shall report directly to the Board.

D. The Board is authorized to adopt and revise rules, not inconsistent with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, as may be necessary to enable it to carry into effect the provisions of this section.

E. A portion of licensing fees for each allied profession, not to exceed Ten Dollars ($10.00), may be used to implement and maintain the Allied Professional Peer Assistance Program.

F. All monies paid pursuant to subsection E of this section shall be deposited in an agency special account revolving fund under the Oklahoma Board of Medical Licensure and Supervision, and

shall be used for the general operating expenses of the Allied Professional Peer Assistance Program, including payment of personal services.

G. Records and management information system of the professionals enrolled in the Allied Professional Peer Assistance Program and reports shall be maintained in the program office in a place separate and apart from the records of the Board. The records shall be made public only by subpoena and court order; provided however, confidential treatment shall be cancelled upon default by the professional in complying with the requirements of the program.

H. Any person making a report to the Board or to an allied peer assistance committee regarding a professional suspected of practicing allied medical practice while habitually intemperate or addicted to the use of habit-forming drugs, or a professional's progress or lack of progress in rehabilitation, shall be immune from any civil or criminal action resulting from such reports, provided such reports are made in good faith.

I. A professional's participation in the Allied Professional Peer Assistance Program in no way precludes additional proceedings by the Board for acts or omissions of acts not specifically related to the circumstances resulting in the professional's entry into the program. However, in the event the professional defaults from the program, the Board may discipline the professional for those acts which led to the professional entering the program.

J. The Executive Director of the Board shall suspend the license immediately upon notification that the licensee has defaulted from the Allied Professional Peer Assistance Program, and shall assign a hearing date for the matter to be presented to the Board.

K. All treatment information, whether or not recorded, and all communications between a professional and therapist are both privileged and confidential. In addition, the identity of all persons who have received or are receiving treatment services shall be considered confidential and privileged.

L. As used in this section, unless the context otherwise requires:

1. "Board" means the Oklahoma Board of Medical Licensure and Supervision; and

2. "Allied peer assistance committee" means the peer assistance evaluation advisory committee created in this section, which is appointed by the Oklahoma Board of Medical Licensure and Supervision to carry out specified duties.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 493.2, as last amended by Section 4, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2008, 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 recognized foreign medical school ~~with education and training substantially equivalent to that offered by the University of Oklahoma College of Medicine~~ as evidenced by national and international resources available to the Board.

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

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

D. The Board may promulgate rules requiring all foreign applicants to satisfactorily complete at least twelve (12) months and up to twenty-four (24) months of Board-approved progressive graduate

medical training as determined necessary by the Board for the protection of the public health, safety and welfare.

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

F. Foreign applicants shall provide satisfactory evidence of having met the requirements for permanent residence or temporary nonimmigrant status as set forth by the United States Immigration and Naturalization Service.

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

SECTION 3. AMENDATORY 59 O.S. 2001, Section 493.3, is amended to read as follows:

Section 493.3 A. Endorsement of licensed applicants: The State Board of Medical Licensure and Supervision may issue a license by endorsement to an applicant who:

1. Has complied with all current medical licensure requirements except those for examination; and

2. Has passed a medical licensure examination given in English in another state, the District of Columbia, a territory or possession of the United States, or Canada, or has passed the National Boards Examination administered by the National Board of Medical Examiners, provided the Board determines that such examination was equivalent to the Board's examination used at the time of application.

B. Notwithstanding any other provision of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, the Board may require applicants for full and unrestricted medical

licensure by endorsement, who have not been formally tested by another state or territory of the United States or any Canadian medical licensure jurisdiction, a Board-approved medical certification agency, or a Board-approved medical specialty board within a specific period of time before application to pass a written and/or oral medical examination approved by the Board.

C. The Board may authorize the secretary to issue a temporary medical license for the intervals between Board meetings. A temporary license shall be granted only when the secretary is satisfied as to the qualifications of the applicant to be licensed under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act but where such qualifications have not been verified to the Board. A temporary license shall:

1. Be granted only to an applicant demonstrably qualified for a full and unrestricted medical license under the requirements set by the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and the rules of the Board; and

2. Automatically terminate on the date of the next Board meeting at which the applicant may be considered for a full and unrestricted medical license.

D. The Board may establish rules authorizing the issuance of conditional, restricted, or otherwise circumscribed licenses<u>, or issuance of licenses under terms of agreement, for all licenses under its legislative jurisdiction</u> as are necessary for the public health, safety, and welfare.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 506, is amended to read as follows:

Section 506. A. If it is the decision of the State Board of Medical Licensure and Supervision, after considering all the testimony presented, that the defendant is guilty as charged, the Board shall revoke the license of the defendant, and the defendant's rights to practice medicine and surgery. The Board, however, may suspend a license, during which suspension the holder of such suspended license shall not be entitled to practice medicine and surgery thereunder. If during suspension, the defendant

practiced medicine or surgery or has been guilty of any act of unprofessional conduct, as defined by the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, the Board may revoke the license of such licensee or place the licensee upon probation for any period of time not less than one (1) year, nor more than five (5) years, or on second offense place the licensee on probation for an indefinite period of time, during which time the licensee's conduct will be kept under observation. The Board, furthermore, may impose on the defendant, as a condition of any suspension or probation, a requirement that the defendant attend and produce evidence of successful completion of a specific term of education, residency, or training in enumerated fields and/or institutions as ordered by the Board based on the facts of the case. The education, residency, or training shall be at the expense of the defendant. The Board may also impose other disciplinary actions as provided for in Section 509.1 of this title. At the end of any term of suspension imposed by the Board, the applicant for reinstatement shall show to the Board successful completion of all conditions and requirements imposed by the Board and demonstrate eligibility for reinstatement.

B. Immediately upon learning that a licensee has been convicted of a felonious violation of a state or federal narcotics law, the Executive Director of the Board shall summarily suspend the license and assign a hearing date for the matter to be presented to the Board. <u>Immediately upon learning that a licensee is in violation of a Board-ordered probation, the Executive Director of the Board may summarily suspend the license based on imminent harm to the public and assign a hearing date for the matter to be presented at the next scheduled Board meeting.</u>

SECTION 5. AMENDATORY 59 O.S. 2001, Section 509, as amended by Section 9, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2008, 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. 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;

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

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

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

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

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

a. the antinarcotic or prohibition laws and regulations of the federal government,

b. the laws of this state, or

c. State Board of Health rules;

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

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;

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

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;

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

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

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

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

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;

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;

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~~

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

20. Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and maintained; or

21. Personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care. This includes but is not limited to conduct that interferes with one's ability to work with other members of the health care team.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 509.1, as last amended by Section 10, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2008, 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;
8. Satisfactory completion of an educational, training, and/or treatment program or programs; and
9. Administrative fines of up to Five Thousand Dollars ($5,000.00) per violation.

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

B. LETTER OF CONCERN: The Board may authorize the secretary to issue a <u>confidential</u> 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 rules describing acts of unprofessional or unethical conduct 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:

1. 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.

F. ALL LICENSED PROFESSIONALS: All disciplinary actions defined in this section are applicable to any and all professional licensees under the legislative jurisdiction of the State Board of Medical Licensure and Supervision.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 3006, is amended to read as follows:

Section 3006. A. The State Board of Medical Licensure and Supervision, with the assistance of the Advisory Committee on Orthotics and Prosthetics, shall establish qualifications for licensure and registration under the Orthotics and Prosthetics Practice Act. Until November 1, 2004, the Board shall provide, as set forth herein, an alternative qualification licensure opportunity for current practitioners in this state who are unable to meet standard qualifications. Persons meeting the qualifications of more than one discipline may be licensed in more than one discipline.

B. To be licensed to practice orthotics or prosthetics according to standard qualifications, a person shall:

1. Possess a baccalaureate degree from an institution of higher education accredited by a general accrediting agency recognized by the Oklahoma State Regents for Higher Education;

2. Have completed an orthotic or prosthetic education program that meets or exceeds the requirements, including clinical practice, of the Commission on Accreditation of Allied Health Education Programs;

3. Have completed a clinical residency in the professional area for which the license is sought that meets or exceeds the standards, guidelines, and procedures for residencies of the National Commission on Orthotic and Prosthetic Education or of any other such group that is recognized by the State Board of Medical Licensure and Supervision; and

4. Demonstrate attainment of internationally accepted standards of orthotic and prosthetic care as outlined by the International Society of Prosthetics and Orthotics professional profile for Category I orthotic and prosthetic personnel.

C. To be licensed to practice orthotics or prosthetics under alternative qualification requirements, a person shall:

1. Pass an examination in the area of licensure, which may be an available examination designated by the State Board of Medical Licensure and Supervision or an examination developed by the Board; and

2. Execute an alternative qualification contract with the State Board of Medical Licensure and Supervision the conditions of which shall be based on the Board's evaluation of the applicant's experience and the Board's determination of further experience needed or other requirements to be met, which contract shall specify a period of time not to exceed ten (10) years for completion of the further experience or requirements.

D. Upon execution of the alternative qualification contract, the Board shall issue a license and shall renew the license subject to the licensee's making satisfactory progress as required by the contract. Persons who satisfactorily complete the alternative qualification contract shall be thereafter considered as having met the qualifications necessary for license renewal.

E. No person shall be permitted to enter into an alternative qualification contract after October 31, 2004. A person who has not done so by October 31, 2004, shall not be issued a license to practice orthotics or prosthetics without meeting standard qualifications.

F. Notwithstanding any other provision of this section, a person who has practiced full time during the three-year period preceding the effective date of this act in a prosthetic or orthotic facility as a prosthetist or orthotist and has a high school diploma or equivalent, or who has practiced as an assistant or technician, may file an application with the Board within ninety (90) days from the effective date of this act for permission to continue to practice at his or her identified level of practice. The Board, after verifying the applicant's work history and receiving payment of the application fee as established pursuant to this act, shall, without examination of the applicant, issue the applicant a license or certificate of registration. To make the investigations necessary to verify the applicant’s

work history, the Board may require that the applicant complete a questionnaire regarding the work history and scope of practice. The Board shall take no more than six (6) months to verify the work history. Applicants applying after the ninety-day application period of this subsection has expired shall meet the qualifications elsewhere set forth for standard or alternative qualification for licensure or for registration as determined by the Board.

G. The Board may authorize the Board Secretary to issue a temporary license for up to two (2) years to individuals who have graduated from a program and completed their residency as outlined in subsection B of this section, but not yet passed the licensure exam. A temporary license authorizing practice under supervision shall be granted only when the Board Secretary is satisfied as to the qualifications of the applicant to be licensed under the Orthotics and Prosthetics Practice Act except for examination. A temporary license shall be granted only to an applicant demonstrably qualified for a full and unrestricted license under the requirements set by the Orthotics and Prosthetics Practice Act and the rules of the Board.

SECTION 8. This act shall become effective July 1, 2009.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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