

ENROLLED HOUSE
BILL NO. 1569

By: Schwartz, Sullivan, Ritze
and Peterson of the House

and

Crain of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 725.1, 725.2, as amended by Section 5, Chapter 543, O.S.L. 2004 and 725.3 (59 O.S. Supp. 2008, Section 725.2), which relate to the designation of branch of healing arts; requiring certain letters or words to be appended to certain names; adding certain designations to be used; defining term; requiring certain written notice of certain license; authorizing certain rule-making authority to certain entities; requiring identification of type of license in certain advertisements; requiring certain documents to be included in certain advertisements; making certain acts unlawful; specifying violations and punishments; providing for separate offenses; requiring certain agencies to refer certain violations to the Attorney General; amending 59 O.S. 2001, Section 492, which relates to the practice of allopathic medicine; modifying definition of the practice of medicine or surgery; amending 59 O.S. 2001, Section 622, which relates to the practice of osteopathic medicine; providing for stroke prevention and treatment through electronic communications; amending 36 O.S. 2001, Section 6802, which relates to telemedicine; modifying definition; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 725.1, is amended to read as follows:

Section 725.1 A. Every person who writes or prints, or causes to be written or printed, his or her name (whether or not the word "Doctor", or an abbreviation thereof, is used in connection therewith) ~~in any manner~~ in connection with, ~~such person in any manner as~~ engaging in, or ~~in any manner~~ holding himself or herself out as engaging in, any of the branches of the healing art ~~as defined in 59 O.S. 1951 § 702, must~~ shall append to his or her name ~~so written or printed the letters or words set forth in Section 725.2 of this title if the person is one of the nine classes of persons listed in subsection A of Section 725.2 of this title.~~

B. If the person is not one of the nine classes of persons listed in subsection A of Section 725.2 of this title and is engaged in a branch of the healing art, the person shall write or print, in the same size letters as his or her name, appropriate and generally and easily understood words or letters, which clearly show and indicate the branch of the healing art in which he or she is licensed to practice and is engaged.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 725.2, as amended by Section 5, Chapter 543, O.S.L. 2004 (59 O.S. Supp. 2008, Section 725.2), is amended to read as follows:

Section 725.2 A. The following nine classes of persons may use the word "Doctor", or an abbreviation thereof, and shall have the right to use, whether or not in conjunction with the word "Doctor", or any abbreviation thereof, the following designations:

1. The letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine by a person licensed to practice podiatry under Chapter 4 of this title the Podiatric Medicine Practice Act;

2. The letters "D.C." or the words chiropractor or doctor of chiropractic by a person licensed to practice chiropractic under Chapter 5 of this title the Oklahoma Chiropractic Practice Act;

3. The letters "D.D.S." or "D.M.D.", as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate, by a person licensed to practice dentistry under Chapter 7 of this title the State Dental Act;

4. The letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery under ~~Chapter 11 of this title~~ the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act;

5. The letters "O.D." or the words optometrist or doctor of optometry by a person licensed to practice optometry under ~~Chapter 13~~ Sections 581 through 606 of this title;

6. The letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine by a person licensed to practice osteopathy under ~~Chapter 14 of this title~~ the Oklahoma Osteopathic Medicine Act;

7. The letters "Ph.D.", "Ed.D.", or "Psy.D." or the words psychologist, therapist, or counselor by a person licensed as a health service psychologist pursuant to the Psychologists Licensing Act;

8. The letters "Ph.D.", "Ed.D.", or other letters representing a doctoral degree or the words language pathologist, speech pathologist, or speech and language pathologist by a person licensed as a speech and language pathologist pursuant to the Speech-Language Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of speech and language pathology; and

9. The letters "Ph.D.", "Ed.D.", or other letters representing a doctoral degree or the word audiologist by a person licensed as an audiologist pursuant to the Speech-Language Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of audiology.

B. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "doctor" or "doctors" shall mean and include each of the nine classes of persons listed in subsection A and the word "physician" or "physicians", as provided in subsection C of this section. Any other person using the term doctor, or any abbreviation thereof, shall designate the authority under which the title is used or the college or honorary degree that gives rise to use of the title.

C. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "physician" or "physicians" shall mean and include each of the classes of persons

listed in paragraphs 1 through 6 of subsection A and the word "doctor" or "doctors" as provided in subsection B of this section. The term "physician" shall not include any person specified in paragraphs 7 through 9 of subsection A of this section unless such person is otherwise authorized to use such designation pursuant to this section.

D. For purposes of this section, "provider" means and includes:

1. Each of the nine classes of persons listed in subsection A of this section and referred to in subsections B and C of this section; and

2. Any other person using the term doctor or any abbreviation thereof.

E. Persons in each of the nine classes listed in subsection A, and referred to in subsections B and C, of this section shall identify through written notice, which may include the wearing of a name tag, the type of license under which the doctor is practicing, utilizing the designations provided in subsections A, B and C of this section. Each applicable licensing board is authorized by rule to determine how its license holders may comply with this disclosure requirement.

F. 1. Any advertisement for health care services naming a provider shall:

a. identify the type of license of the doctor utilizing the letters or words set forth in this section if the person is one of the classes of persons listed in subsection A of this section, and referred to in subsections B and C of this section, or

b. utilize appropriate, accepted, and easily understood words or letters, which clearly show and indicate the branch of the healing art in which the person is licensed to practice and is engaged in, if the person is not one of the nine classes of persons listed in subsection A of this section, or referred to in subsections B and C of this section.

2. The term "advertisement" includes any printed document including letterhead, video clip, or audio clip created by, for, or

at the direction of the provider or providers and advertised for the purpose of promoting the services of the doctor or provider.

G. 1. It shall be unlawful for any medical doctor, doctor of osteopathic medicine, doctor of dental surgery, doctor of dental medicine, doctor of optometry, doctor of podiatry, or doctor of chiropractic to make any deceptive or misleading statement, or engage in any deceptive or misleading act, that deceives or misleads the public or a prospective or current patient, regarding the training and the license under which the person is authorized to practice.

2. The term "deceptive or misleading statement or act" includes, but is not limited to:

- a. such statement or act in any advertising medium,
- b. making a false statement regarding the education, skills, training, or licensure of a person, or
- c. in any other way describing the profession, skills, training, expertise, education, or licensure of a person in a fashion that causes the public, a potential patient, or current patient to believe that the person is a medical doctor, doctor of osteopathic medicine, doctor of dental surgery, doctor of dental medicine, doctor of optometry, doctor of podiatry, or doctor of chiropractic when that person does not hold such credentials.

H. Notwithstanding any other provision of this section, a person licensed in this state to perform speech pathology or audiology services is hereby designated to be a practitioner of the healing art for purposes of making a referral for speech pathology or audiology services pursuant to the provisions of the Individuals with Disabilities Education Act, Amendment of 1997, Public Law 105-17, and Section 504 of the Rehabilitation Act of 1973.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 725.3, is amended to read as follows:

Section 725.3 A. 1. Any ~~person who shall violate licensed health care provider found by the appropriate licensing board or state agency to be in violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof~~ subsection E

of Section 725.2 of this title shall be punished by a fine an administrative penalty of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not less than five (5) days nor more than thirty (30) days, or by both such fine and imprisonment One Thousand Dollars (\$1,000.00) to be administered and collected by the appropriate licensing board or state agency.

2. Any person who is not a licensed health care provider and found by the appropriate licensing board or state agency to be in violation of the provisions of subsection E of Section 725.2 of this title, shall be punished by an administrative penalty of not less than Twenty-five Dollars (\$25.00) nor more than One Thousand Dollars (\$1,000.00) to be administered and collected by the appropriate licensing board or state agency. Each day this act is violated shall constitute a separate offense and shall be punishable as such.

B. 1. Any licensed health care provider found by the appropriate licensing board or state agency to be in violation of the provisions of this act, other than subsection E of Section 725.2 of this title, shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) to be administered and collected by the appropriate licensing board or state agency.

2. Any person who is not a licensed health care provider and found by the appropriate licensing board or state agency to be in violation of the provisions of this act, other than subsection E of Section 725.2 of this title, shall be punished by an administrative penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) to be administered and collected by the appropriate licensing board or state agency.

3. Each day this act is violated shall constitute a separate offense and shall be punishable as such.

C. A case shall be referred to the Attorney General for investigation and prosecution if a licensing board or state agency makes a finding of gross or repeated violations of this act by a licensed health care provider or an unlicensed health care provider.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 492, is amended to read as follows:

Section 492. A. Every person shall be regarded as practicing allopathic medicine within the meaning and provisions of this act, who shall append to his or her name the letters "M.D.", "Physician" or any other title, letters or designation which represent that such person is a physician, or who shall for a fee or any form of compensation diagnose and/or treat disease, injury or deformity of persons in this state by any allopathic legend drugs, surgery, manual, or mechanical treatment unless otherwise authorized by law.

B. A hospital or related institution as such terms are defined in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the principal purpose or function of providing hospital or medical care, including but not limited to any corporation, association, trust, or other organization organized and operated for such purpose, may employ one or more persons who are duly licensed to practice medicine in this state without being regarded as itself practicing medicine within the meaning and provisions of this section. The employment by the hospital or related institution of any person who is duly licensed to practice medicine in this state shall not, in and of itself, be considered as an act of unprofessional conduct by the person so employed. Nothing provided herein shall eliminate, limit, or restrict the liability for any act or failure to act of any hospital, any hospital's employees, or persons duly licensed to practice medicine.

C. The definition of the practice of medicine and surgery shall include, but is not limited to:

1. Advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine and surgery in this state;

2. Any offer or attempt to prescribe, order, give, or administer any drug or medicine and surgery for the use of any other person, except as otherwise authorized by law;

3. a. Any offer or attempt, except as otherwise authorized by law, to prevent, diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities except for manual manipulation any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition, except as otherwise authorized by law.

b. Except as provided in subsection D of this section, performance by a person within or outside of this state, through an ongoing regular arrangement, of diagnostic or treatment services, including but not limited to, stroke prevention and treatment, through electronic communications for any patient whose condition is being diagnosed or treated within this state. A person who performs any of the functions covered by this subparagraph submits himself or herself to the jurisdiction of the courts of this state for the purposes of any cause of action resulting from the functions performed.

c. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall be construed to affect or give jurisdiction to the Board over any person other than medical doctors or persons holding themselves out as medical doctors;

4. Any offer or attempt to perform any surgical operation upon any person, except as otherwise authorized by law; and

5. The use of the title Doctor of Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D. or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless, where appropriate, such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this state.

D. The practice of medicine and surgery, as defined in this section, shall not include:

1. A student while engaged in training in a medical school approved by the Board or while engaged in graduate medical training under the supervision of the medical staff of a hospital or other health care facility approved by the state medical board for such training, except that a student engaged in graduate medical training shall hold a license issued by the Board for such training;

2. Any person who provides medical treatment in cases of emergency where no fee or other consideration is contemplated, charged or received;

3. A commissioned medical officer of the armed forces of the United States or medical officer of the United States Public Health Service of the Veterans Administration of the United States in the discharge of official duties and/or within federally controlled facilities; and provided that such person shall be fully licensed to practice medicine and surgery in one or more jurisdictions of the United States; provided further that such person who holds a medical license in this state shall be subject to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act;

4. Any person licensed under any other act when properly practicing in the healing art for which that person is duly licensed;

5. The practice of those who endeavor to prevent or cure disease or suffering by spiritual means or prayer;

6. Any person administering a domestic or family remedy to a member of such person's own family;

7. Any person licensed to practice medicine and surgery in another state or territory of the United States who renders emergency medical treatment or briefly provides critical medical service at the specific lawful direction of a medical institution or federal agency that assumes full responsibility for that treatment or service and is approved by the Board;

8. Any person who is licensed to practice medicine and surgery in another state or territory of the United States whose sole purpose and activity is limited to brief actual consultation with a specific physician who is licensed to practice medicine and surgery by the Board, other than a person with a special or restricted license; or

9. The practice of any other person as licensed by appropriate agencies of this state, provided that such duties are consistent with the accepted standards of the person's profession and the person does not represent himself or herself as a Doctor of Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., or any combination thereof.

E. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall prohibit:

1. The service rendered by a physician's unlicensed trained assistant, if such service is rendered under the supervision and control of a licensed physician pursuant to Board rules, provided such rules are not in conflict with the provisions of any other healing arts licensure act or rules promulgated pursuant to such act; or

2. The service of any other person duly licensed or certified by the state to practice the healing arts.

F. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall prohibit services rendered by any person not licensed by the Board and practicing any nonallopathic healing practice.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 622, is amended to read as follows:

Section 622. A. 1. Except as otherwise provided by this section, it shall be unlawful for any person to practice as an osteopathic physician and surgeon in this state, without a license to do so, issued by the State Board of Osteopathic Examiners; provided, that any license or certificate heretofore issued under the laws of this state, authorizing its holder to practice osteopathic medicine, shall remain in full force and effect.

2. Osteopathic physicians engaged in postgraduate training beyond the internship year, also known as PGY-1, shall be licensed.

B. 1. A person within or outside of this state who performs through electronic communications diagnostic or treatment services within the scope of practice of an osteopathic physician and surgeon, including but not limited to, stroke prevention and treatment, for any patient whose condition is being diagnosed or treated within this state shall be licensed in this state, pursuant to the provisions of the Oklahoma Osteopathic Medicine Act. However, in such cases, a nonresident osteopathic physician who, while located outside this state, consults on an irregular basis with a physician who is located in this state is not required to be licensed in this state.

2. Any osteopathic physician licensed in this state who engages in the prescription of drugs, devices, or treatments via electronic means may do so only in the context of an appropriate physician/patient relationship wherein a proper patient record is

maintained including, at the minimum, a current history and physical.

3. Any commissioned medical officer of the armed forces of the United States or medical officer of the United States Public Health Service or the Veterans Administration of the United States, in the discharge of official duties and/or within federally controlled facilities, who is fully licensed to practice osteopathic medicine and surgery in one or more jurisdictions of the United States shall not be required to be licensed in this state pursuant to the Oklahoma Osteopathic Medicine Act, unless the person already holds an osteopathic medical license in this state pursuant to the Oklahoma Osteopathic Medicine Act. In such case, the medical officer shall be subject to the Oklahoma Osteopathic Medicine Act.

4. A person who performs any of the functions covered by this subsection submits themselves to the jurisdiction of the courts of this state for the purposes of any cause of action resulting from the functions performed.

C. A hospital or related institution, as such terms are defined in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the principal purpose or function of providing hospital or medical care, including but not limited to any corporation, association, trust, or other organization organized and operated for such purpose, may employ one or more persons who are duly licensed to practice osteopathic medicine in this state without being regarded as itself practicing osteopathic medicine within the meaning and provisions of this section. The employment by the hospital or related institution of any person who is duly licensed shall not, in and of itself, be considered as an act of unprofessional conduct by the person so employed. Nothing provided herein shall eliminate, limit or restrict the liability for any act or failure to act of any hospital, any hospital's employees or persons duly licensed to practice osteopathic medicine.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6802, is amended to read as follows:

Section 6802. As used in this act, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of strokes, transfer of medical data, or exchange of medical education information by means of audio, video, or data

communications. Telemedicine is not a consultation provided by telephone or facsimile machine.

SECTION.7 This act shall become effective November 1, 2009.

Passed the House of Representatives the 4th day of May, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 14th day of April, 2009.

Presiding Officer of the Senate