

SB 1133

1 THE STATE SENATE
2 Tuesday, February 10, 2009

3 Senate Bill No. 1133
4 As Amended

5 SENATE BILL NO. 1133 - By: Jolley of the Senate and Denney of the
6 House.

7 [professions and occupations - Oklahoma Interventional Pain
8 Management and Treatment Act - codification -
9 emergency]

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 650 of Title 59, unless there is
13 created a duplication in numbering, reads as follows:

14 A. This act shall be known and may be cited as the "Oklahoma
15 Interventional Pain Management and Treatment Act".

16 B. As used in this section:

17 1. "Chronic pain" means a pain state which is subacute,
18 persistent and intractable;

19 2. "Fluoroscope" means a radiologic instrument equipped with a
20 fluorescent screen on which opaque internal structures can be viewed
21 as moving shadow images formed by the differential transmission of
22 x-rays throughout the body; and

23 3. "Interventional pain management" means the practice of
24 medicine devoted to the diagnosis and treatment of chronic pain,
25 through the use of such techniques as:

- 1 a. ablation of targeted nerves,
2 b. percutaneous precision needle placement with placement
3 of drugs in targeted areas, such as local anesthetics,
4 steroids, analgesics, peripheral nerve blocks,
5 epidural injections and spinal joint injections, and
6 c. surgical techniques, such as laser or endoscopic
7 diskectomy, intrathecal infusion pumps and spinal cord
8 stimulators.

9 C. It shall be unlawful to practice or offer to practice
10 interventional pain management in this state unless such person has
11 been duly licensed under the provisions of **the Oklahoma Allopathic**
12 **Medical and Surgical Licensure and Supervision Act or the Oklahoma**
13 **Osteopathic Medicine Act.**

14 D. The State Board of Medical Licensure and Supervision shall
15 establish guidelines for the standard of care for interventional
16 pain management, including the proper use of fluoroscopy in such
17 practice. **Nothing in this section shall be construed to affect or**
18 **give jurisdiction to the State Board of Medical Licensure and**
19 **Supervision over any osteopathic physician properly licensed by the**
20 **State Board of Osteopathic Examiners.**

21 SECTION 2. AMENDATORY 59 O.S. 2001, Section 491, as last
22 amended by Section 2, Chapter 358, O.S.L. 2008 (59 O.S. Supp. 2008,
23 Section 491), is amended to read as follows:

1 Section 491. A. 1. Every person before practicing medicine
2 and surgery or any of the branches or departments of medicine and
3 surgery, within the meaning of the Oklahoma Allopathic Medical and
4 Surgical Licensure and Supervision Act or the Oklahoma
5 Interventional Pain Management and Treatment Act, within this state,
6 must be in legal possession of the unrevoked license or certificate
7 issued pursuant to the Oklahoma Allopathic Medical and Surgical
8 Licensure and Supervision Act.

9 2. Any person practicing in such manner within this state, who
10 is not in the legal possession of a license or certificate, shall,
11 upon conviction, be guilty of a felony, punishable by a fine in an
12 amount not less than One Thousand Dollars (\$1,000.00) nor more than
13 Ten Thousand Dollars (\$10,000.00), or by imprisonment in the county
14 jail for a term of not more than one (1) year or imprisonment in the
15 custody of the Department of Corrections for a term of not more than
16 four (4) years, or by both such fine and imprisonment.

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

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

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

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

16 2. The Board may impose administrative penalties against any
17 person who violates any of the provisions of the Oklahoma
18 Interventional Pain Management and Treatment Act or any rule
19 promulgated pursuant thereto. The Board is authorized to initiate
20 disciplinary and injunctive proceedings against any person who has
21 violated any of the provisions of the Oklahoma Interventional Pain
22 Management and Treatment Act or any rule of the Board promulgated
23 pursuant thereto. The Board is authorized in the name of the state

1 to apply for relief by injunction in the established manner provided
2 in cases of civil procedure, without bond, to enforce the provisions
3 of the Oklahoma Interventional Pain Management and Treatment Act, or
4 to restrain any violation thereof. The members of the Board shall
5 not be personally liable for proceeding under this section.

6 3. Fines assessed shall be in addition to any criminal penalty
7 provided pursuant to subsection A of this section.

8 **SECTION 3. AMENDATORY 59 O.S. 2001, Section 622, is**
9 **amended to read as follows:**

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

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

19 3. Osteopathic physicians engaged in interventional pain
20 management pursuant to the Oklahoma Interventional Pain Management
21 and Treatment Act shall be licensed by the State Board of
22 Osteopathic Examiners.

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

11 2. Any osteopathic physician licensed in this state who engages
12 in the prescription of drugs, devices, or treatments via electronic
13 means may do so only in the context of an appropriate
14 physician/patient relationship wherein a proper patient record is
15 maintained including, at the minimum, a current history and
16 physical.

17 3. Any commissioned medical officer of the armed forces of the
18 United States or medical officer of the United States Public Health
19 Service or the Veterans Administration of the United States, in the
20 discharge of official duties and/or within federally controlled
21 facilities, who is fully licensed to practice osteopathic medicine
22 and surgery in one or more jurisdictions of the United States shall
23 not be required to be licensed in this state pursuant to the

1 Oklahoma Osteopathic Medicine Act, unless the person already holds
2 an osteopathic medical license in this state pursuant to the
3 Oklahoma Osteopathic Medicine Act. In such case, the medical
4 officer shall be subject to the Oklahoma Osteopathic Medicine Act.

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
6 2-5-09 - DO PASS, As Amended and Coauthored.