

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1040

By: Schulz

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6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 directing certain investigators to perform specified
9 duties; granting certain jurisdiction and powers;
10 permitting the Executive Director of the Board of
11 Chiropractic Examiners to issue field citations in
12 certain circumstances; permitting certain field
13 citations to contain specified orders; authorizing
14 assessment of certain fines; requiring that certain
15 field citations be served in specified manner;
16 requiring certain submission and review; requiring
17 certain notification; directing certain committee to
18 hold an informal conference in specified
19 circumstances; specifying when certain actions are
20 considered final orders; providing for payment of
21 certain fines; requiring the Board to hold certain
22 hearings; directing the Board to issue certain
23 decisions; permitting the Board to bring certain
24 actions; providing for failure to pay certain fines;
directing the Board to promulgate certain rules;
providing for codification; and providing an
effective date.

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 161.6a of Title 59, unless there
is created a duplication in numbering, reads as follows:

1 A. 1. Investigators for the Board of Chiropractic Examiners
2 shall perform such services as are necessary in the investigation of
3 criminal activity or preparation of administrative actions.

4 2. In addition, investigators shall have the authority and duty
5 to investigate and inspect the records of all licensees in order to
6 determine whether the licensee is in compliance with applicable
7 narcotics and dangerous drug laws and regulations.

8 B. Any investigator certified as a peace officer by the Council
9 on Law Enforcement Education and Training shall have statewide
10 jurisdiction to perform the duties authorized by this section. In
11 addition, the investigator shall be considered a peace officer and
12 shall have the powers now or hereafter vested by law in peace
13 officers.

14 C. 1. If, upon completion of an investigation, the Executive
15 Director of the Board has probable cause to believe that a licensed
16 chiropractor or any other person has violated provisions of the
17 Oklahoma Chiropractic Practice Act or rules promulgated thereto, the
18 Executive Director may issue a field citation to the licensed
19 chiropractor or other person, as provided in this section. Each
20 field citation shall be in writing and shall describe with
21 particularity the nature of the violation, including but not limited
22 to a reference to the provision of the Oklahoma Chiropractic
23 Practice Act alleged to have been violated.

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1 2. In addition, each field citation may contain an order of
2 abatement fixing a reasonable time for abatement of the violation,
3 and may contain an assessment of an administrative penalty not to
4 exceed Five Hundred Dollars (\$500.00) for a first offense and not to
5 exceed Five Thousand Dollars (\$5,000.00) for a second or subsequent
6 offense. Each day such violation continues shall constitute a
7 separate offense.

8 3. The field citation shall be served upon the licensed
9 chiropractor or other person personally or by any certified mail,
10 return receipt requested.

11 D. Before any field citation shall be issued to any licensed
12 chiropractor, the Executive Director shall have submitted the
13 alleged violation for review and examination to a probable cause
14 committee, comprised of the Board's attorney, an investigator, and a
15 chiropractor licensed in the state of Oklahoma. The probable cause
16 committee, during its review, may contact the licensed chiropractor
17 to discuss and resolve the alleged violation. Upon conclusion of
18 the probable cause committee's review, the committee shall prepare
19 findings of fact and a recommendation. If the committee concludes
20 that probable cause exists that the chiropractor has violated any
21 provisions of the Oklahoma Chiropractic Practice Act or rules
22 promulgated thereto, an administrative penalty shall be assessed
23 upon the licensed chiropractor.

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1 E. 1. If a licensed chiropractor or other person who has been
2 determined by the Board or agent thereof to have violated any
3 provision of the Oklahoma Chiropractic Practice Act or rules
4 promulgated or issued pursuant thereto desires to contest a field
5 citation or the proposed assessment of an administrative penalty
6 therefore, the licensed chiropractor or other person shall, within
7 ten (10) business days after service of the field citation, notify
8 the Executive Director in writing, requesting an informal conference
9 with the probable cause committee.

10 2. The probable cause committee shall hold, within sixty (60)
11 days from the receipt of the written request, an informal
12 conference. After the conclusion of the informal conference, and
13 based on recommendations thereof, the Executive Director may affirm,
14 modify or dismiss the field citation or proposed assessment of an
15 administrative penalty and the Executive Director shall state with
16 particularity in writing the reasons for the action, and shall
17 immediately transmit a copy thereof to the licensed chiropractor or
18 other person and the person who submitted the complaint.

19 F. 1. If the chiropractor or person desires to contest
20 administratively, a decision made after the informal conference, the
21 licensed chiropractor or other person shall inform the Executive
22 Director in writing within thirty (30) calendar days after such
23 person receives the decision resulting from the informal conference.
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1 2. If the licensed chiropractor or other person fails to
2 request an informal conference within the time specified in this
3 section, the field citation, the proposed assessment of the
4 administrative penalty or the decision made after an informal
5 conference shall be deemed a final order of the Board and shall not
6 be subject to further administrative reviews.

7 G. If a fine is paid to satisfy an assessment based on the
8 findings of a violation, payment of the fine shall be represented as
9 satisfactory resolution of the matter for the purposes of public
10 disclosure.

11 H. A chiropractor or other person, in lieu of contesting a
12 field citation pursuant to this section, may transmit to the Board
13 the amount assessed in the citation as an administrative penalty,
14 within thirty (30) days after service of the field citation. If a
15 hearing is not requested pursuant to this section, payment of any
16 fine shall not constitute an admission of the violation charged.

17 I. 1. If a chiropractor or other person has notified the
18 Executive Director within ten (10) working days of the issuance of
19 the assessment or field citation that such chiropractor or other
20 person intends to contest the decision made after the informal
21 conference, the Board shall hold a hearing to be held in accordance
22 with the Administrative Procedures Act and adjudicating such matters
23 for judgment only upon clear and convincing evidence as required by
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1 the Oklahoma Chiropractic Practice Act with the Board having all of
2 the powers granted therein.

3 2. After the hearing, the Board shall issue a decision based on
4 findings of fact, affirming, modifying or vacating the citation, or
5 directing other appropriate relief which shall include, but need not
6 be limited to, a notice that the failure of the chiropractor or
7 other person to comply with any provision of the Board's decision
8 may subject such chiropractor or person to the imposition of the
9 sanctions authorized by the Oklahoma Chiropractic Practice Act.

10 J. After the exhaustion of the review procedures provided for
11 in this section, the Board may bring an action for judicial review
12 and administrative penalty and obtain an order compelling the cited
13 person to comply with any order issued pursuant to this section.

14 K. Failure of a licensee to pay a fine within thirty (30) days
15 of the date of assessment, unless the field citation is being
16 appealed, may result in action being taken by the Board. When a
17 citation is not contested and a fine is not paid, the full amount of
18 the assessed fine shall be added to the fee for the renewal of the
19 license. A license shall not be renewed without payment of the
20 renewal fee and fine.

21 L. The Board shall promulgate rules covering the issuance of
22 field citations, the assessment of administrative penalties and
23 other duties specified by this section which give due consideration
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1 to the appropriateness of the penalty with respect to the following
2 factors:

- 3 1. The gravity of the violation;
- 4 2. The good faith of the person being charged; and
- 5 3. The history of previous violations.

6 SECTION 2. This act shall become effective November 1, 2009.

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