STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1461

By: Ownbey, Ritze and Pittman of the House

and

Jolley of the Senate

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 567.4, 567.5a, 567.8 and 567.18, which relate to the Oklahoma Board of Nursing; requiring Board to fix compensation of Executive Director; providing that certain salaries not exceed certain amounts; permitting Board to issue prescriptive authority recognition by endorsement to certain individuals if certain requirements are met; permitting criminal background checks to be initiated by Board or designated vendor; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 567.4, is amended to read as follows:

Section 567.4. A. The Oklahoma Board of Nursing is hereby established in the State of Oklahoma. The Board shall consist of eleven (11) members who shall be citizens of the United States of America, and residents of Oklahoma, for at least the previous three

(3) years. Six of the members shall be ~~registered nurses~~ Registered Nurses, in good standing under the provisions of the Oklahoma Nursing Practice Act, currently engaged in the practice of nursing as a ~~registered nurse~~ Registered Nurse and shall have had no less than five (5) years of experience as a ~~registered nurse~~ Registered Nurse. At least two of the ~~registered nurses~~ Registered Nurses shall be from the field of nursing education, actively associated with a recognized school of nursing in Oklahoma, and who hold an organizational role of administration/management and who are accountable for strategic, operational and/or performance outcomes. At least two of the ~~registered nurses~~ Registered Nurses who hold an organizational role of administration/management and who are accountable for strategic, operational and/or performance outcomes shall represent nursing service. At least one of the ~~registered nurses~~ Registered Nurses shall be currently engaged in the practice of nursing as an ~~advanced practice nurse~~ Advanced Practice Registered Nurse. Three of the members shall be ~~licensed practical nurses~~ Licensed Practical Nurses in good standing under the provisions of the Oklahoma Nursing Practice Act and currently engaged in the practice of practical nursing as a ~~licensed practical nurse~~ Licensed Practical Nurse and shall have had no less than five (5) years of experience as a ~~licensed practical nurse~~ Licensed Practical Nurse. One of the licensed nurses must be employed in the field of long-term care. One of the licensed nurses shall be

employed in the area of acute care. Two members shall represent the public and shall be eligible voters of this state, knowledgeable in consumer health concerns, and shall neither be nor ever have been associated with the provision of health care, nor be enrolled in any health-related educational program. The public members shall be appointed by the Governor to serve coterminously with the Governor. At least one ~~registered nurse~~ Registered Nurse Board member, one ~~licensed practical nurse~~ Licensed Practical Nurse Board member and one public Board member shall be appointed from a county with a population of less than forty thousand (40,000).

B. For the purpose of nominating, appointing or reappointing members to the Board, this state shall be divided into eight geographical districts, consisting of counties within the districts as follows:

District No. 1 Cimarron, Texas, Beaver, Harper, Woods, Alfalfa, Grant, Kay, Ellis, Woodward, Major, Garfield, Noble, Dewey, Blaine, Kingfisher and Logan;

District No. 2 Roger Mills, Custer, Beckham, Washita, Caddo, Greer, Kiowa, Harmon, Jackson, Comanche, Tillman and Cotton;

District No. 3 Canadian, Grady, McClain, Garvin, Stephens, Murray, Jefferson, Carter and Love;

District No. 4 Oklahoma;

District No. 5 Lincoln, Okfuskee, Cleveland, Pottawatomie, Seminole, Hughes, Pontotoc, Coal, Johnston, Marshall and Bryan;

District No. 6 Creek and Tulsa;

District No. 7 Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Payne, Rogers, Mayes and Delaware; and

District No. 8 Wagoner, Cherokee, Adair, Okmulgee, Muskogee, Sequoyah, McIntosh, Haskell, Leflore, Pittsburg, Latimer, Atoka, Pushmataha, McCurtain and Choctaw.

Not more than one ~~registered nurse~~ Registered Nurse and one ~~licensed practical nurse~~ Licensed Practical Nurse and one public member shall be appointed from any one geographical district.

C. The Governor shall appoint the Registered Nurse Board members from a list of names submitted by the Oklahoma Nurses Association and Oklahoma chapters of nationally recognized ~~registered nurse~~ Registered Nurse organizations. The Governor shall appoint the ~~licensed practical nurse~~ Licensed Practical Nurse Board members from a list of names submitted by the ~~Oklahoma State Association of LPN's and~~ Oklahoma chapters of nationally recognized ~~practical nurse~~ nursing organizations. Individuals who are members of the Oklahoma Board of Nursing prior to ~~the effective date of this act~~ September 1, 1991, shall be allowed to fulfill their terms and be eligible for reappointment.

D. The Registered Nurse and Licensed Practical Nurse members shall be appointed for terms of five (5) years. Upon the death, resignation, or removal of any member, a list from the aforementioned organizations shall be submitted to the Governor who shall appoint a member to fill the vacancy.

1. In addition to the grounds for removal by the Governor of members appointed to the Board provided in Section 2 of Title 74 of the Oklahoma Statutes, it is a ground for removal if a member:

a. does not have at the time of appointment the qualifications required by subsection A of this section,

b. is not employed in nursing for a period of twelve (12) consecutive months during the term for which the member was appointed,

c. is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the Board, or

d. cannot discharge the duties as a Board member for a substantial portion of the term for which the member is appointed because of illness or disability.

2. The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a Board member exists.

3. If the president of the Board has knowledge that a potential ground for removal exists, the president shall then notify the Governor that a potential ground for removal exists.

E. A quorum shall be a majority of the Board which must include at least three ~~(3) registered nurses~~ Registered Nurses and one ~~(1) licensed practical nurse~~ Licensed Practical Nurse.

F. The members of the Board shall annually elect from their number a president, vice-president and a secretary who shall also be the treasurer, and other such officers as necessary to conduct the business of the Board. It shall hold six ~~(6)~~ regular business meetings during each calendar year. Special meetings may be called by the president or secretary with five (5) days' notice to each member of the Board. The Board shall have a seal; it shall make and adopt all necessary rules not inconsistent with the laws of this state, the United States, or with the Oklahoma Nursing Practice Act; and it shall perform the duties and transact the business required under the provisions of the act. The Board shall cause to be kept a record of all meetings ~~for~~ of the Board and give notice of all meetings in accordance with the Administrative Procedures Act and the Open Meetings Act. A list of all persons duly licensed and qualified under this act shall be maintained by the Board. Each member of the Board shall receive, in addition to actual and necessary travel expenses as provided in the State Travel Reimbursement Act, compensation of One Hundred Dollars ($100.00) for

each regular scheduled monthly meeting attended, not to exceed more than six ~~(6)~~ meetings per year. All monies received by the Board shall be held by the treasurer of the Board for meeting the expenses of the Board and for the promotion of nursing education, to employ an attorney to assist the Board and other state and county officials in carrying out the provisions of the Oklahoma Nursing Practice Act, and such other purposes which the Board may determine, and shall be disbursed as directed by the Board. The Board is authorized to adopt and revise rules, not inconsistent with the provisions of the Oklahoma Nursing Practice Act, as may be necessary to enable it to carry into effect the provisions of the act, including rules establishing fees, charges and reimbursement costs. The Board shall appoint and employ a qualified person, who shall be a ~~registered nurse~~ Registered Nurse~~,~~ to serve as Executive Director, and shall fix the compensation, notwithstanding any other provision of law including Section 3601.2 of Title 74 of the Oklahoma Statutes, in an amount not in excess of the maximum salary proposed for the Oklahoma Board of Nursing and set forth in the most recent Compensation Report prepared by or for the Office of Management and Enterprise Services, require a satisfactory bond, and define the duties of the Executive Director.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 567.5a, is amended to read as follows:

Section 567.5a. A. All applicants for a license to practice as an Advanced Practice Registered Nurse shall be subject to Section 567.8 of ~~Title 59 of the Oklahoma Statutes~~ this title.

B. An applicant for an initial license to practice as an Advanced Practice Registered Nurse shall:

1. Submit a completed written application and appropriate fees as established by the Board;

2. Submit a criminal history records check that complies with Section 567.18 of this title;

3. Hold a current Registered Nurse license in this state;

~~3.~~ 4. Have completed an advanced practice registered nursing education program in one of the four advanced practice registered nurse roles and a specialty area recognized by the Board. Effective January 1, 2016, the applicant shall have completed an accredited graduate level advanced practice registered nursing education program in at least one of the following population foci: family/individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health/gender-related, or psychiatric/mental health;

~~4.~~ 5. Be currently certified in an advanced practice specialty certification consistent with educational preparation and by a national certifying body recognized by the Board; and

~~5.~~ 6. Provide any and all other evidence as required by the Board in its rules.

C. The Board may issue a license by endorsement to an Advanced Practice Registered Nurse licensed under the laws of another state if the applicant meets the qualifications for licensure in this state. An applicant by endorsement shall:

1. Submit a completed written application and appropriate fees as established by the Board;

2. Hold a current Registered Nurse license in this state;

3. Hold recognition as an Advanced Practice Registered Nurse in a state or territory;

4. Have completed an advanced practice registered nursing education program in one of the four roles and a specialty area recognized by the Board. Effective January 1, 2016, the applicant shall have completed an accredited graduate level advanced practice registered nursing education program in at least one of the following population foci: family/individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health/gender-related, or psychiatric/mental health;

5. Be currently certified in an advanced practice specialty certification consistent with educational preparation and by a national certifying body recognized by the Board;

6. Meet continued competency requirements as set forth in Board rules; and

7. Provide any and all other evidence as required by the Board in its rules.

D. The Board may issue prescriptive authority recognition by endorsement to an Advanced Practice Registered Nurse licensed as an APRN-CNP, APRN-CNS, or APRN-CNM under the laws of another state if the applicant meets the requirements set forth in this section. An applicant for prescriptive authority recognition by endorsement shall:

1. Submit a completed written application and appropriate fees as established by the Board;

2. Hold current Registered Nurse and Advanced Practice Registered Nurse licenses (APRN-CNP, APRN-CNS, or APRN-CNM) in the state;

3. Hold current licensure or recognition as an Advanced Practice Registered Nurse in the same role and specialty with prescribing privileges in another state or territory;

4. Submit documentation verifying successful completion of a graduate level advanced practice registered nursing education program that included an academic course in pharmacotherapeutic management, and didactic and clinical preparation for prescribing incorporated throughout the program;

5. Submit a written statement from an Oklahoma licensed physician supervising prescriptive authority as required by the Board in its rules;

6. Meet continued competency requirements as set forth in Board rules; and

7. Provide any and all other evidence as required by the Board in its rules.

E. An Advanced Practice Registered Nurse license issued under this section shall be renewed concurrently with the registered nurse license provided that qualifying criteria continue to be met.

~~E.~~ F. The Board may reinstate a license as set forth in Board rules.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 567.8, is amended to read as follows:

Section 567.8. A. The Oklahoma Board of Nursing shall have the power to take any or all of the following actions:

1. To deny, revoke or suspend any:

a. licensure to practice as a Licensed Practical Nurse,

b. licensure to practice as a Registered Nurse,

c. licensure to practice as an Advanced Practice Registered Nurse,

d. certification to practice as an ~~advanced unlicensed assistive person~~ Advanced Unlicensed Assistant,

e. authorization for prescriptive authority, or

f. authority to order, select, obtain and administer drugs;

2. To assess administrative penalties; and

3. To otherwise discipline applicants, licensees or ~~advanced unlicensed assistive persons~~ Advanced Unlicensed Assistants.

B. The Board shall impose a disciplinary action against the person pursuant to the provisions of subsection A of this section upon proof of one or more of the following items. The person:

1. Is guilty of deceit or material misrepresentation in procuring or attempting to procure:

a. a license to practice registered nursing, licensed practical nursing, or recognition to practice advanced practice registered nursing, or

b. certification as an ~~advanced unlicensed assistive person~~ Advanced Unlicensed Assistant;

2. Is guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of any licensee or ~~advanced unlicensed assistant~~ Advanced Unlicensed Assistant, or any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed, or any conduct resulting in the revocation of a deferred or suspended sentence or probation imposed pursuant to such conviction;

3. Fails to adequately care for patients or to conform to the minimum standards of acceptable nursing or ~~advanced unlicensed assistant~~ Advanced Unlicensed Assistant practice that, in the opinion of the Board, unnecessarily exposes a patient or other person to risk of harm;

4. Is intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients;

5. Exhibits through a pattern of practice or other behavior actual or potential inability to practice nursing with sufficient knowledge or reasonable skills and safety due to impairment caused by illness, use of alcohol, drugs, chemicals or any other substance, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills, mental illness, or disability that results in inability to practice with reasonable judgment, skill or safety; provided, however, the provisions of this paragraph shall not be utilized in a manner that conflicts with the provisions of the Americans with Disabilities Act;

6. Has been adjudicated as mentally incompetent, mentally ill, chemically dependent or dangerous to the public or has been committed by a court of competent jurisdiction, within or without this state;

7. Is guilty of unprofessional conduct as defined in the rules of the Board;

8. Is guilty of any act that jeopardizes a patient's life, health or safety as defined in the rules of the Board;

9. Violated a rule promulgated by the Board, an order of the Board, or a state or federal law relating to the practice of registered, practical or advanced practice <u>registered</u> nursing or

advanced unlicensed assisting, or a state or federal narcotics or controlled dangerous substance law;

10. Has had disciplinary actions taken against the individual's registered or practical nursing license, advanced unlicensed assistive certification, or any ~~health-related~~ professional or occupational license, registration or certification in this or any state, territory or country;

11. Has defaulted from the Peer Assistance Program for any reason;

12. Fails to maintain professional boundaries with patients, as defined in the Board rules; or

13. Engages in sexual misconduct, as defined in Board rules, with a current or former patient or key party, inside or outside the health care setting.

C. Any person who supplies the Board information in good faith shall not be liable in any way for damages with respect to giving such information.

D. The Board may cause to be investigated all reported violations of the Oklahoma Nursing Practice Act.

E. The Board may authorize the executive director to issue a confidential letter of concern to a licensee when evidence does not warrant formal proceedings, but the executive director has noted indications of possible errant conduct that could lead to serious consequences and formal action.

F. All individual proceedings before the Board shall be conducted in accordance with the Administrative Procedures Act.

G. At a hearing the accused shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on behalf of the accused, to cross-examine witnesses and to have subpoenas issued by the designated Board staff. If the accused is found guilty of the charges the Board may refuse to issue a renewal of license to the applicant, revoke or suspend a license, or otherwise discipline a licensee.

H. A person whose license is revoked may not apply for reinstatement during the time period set by the Board. The Board on its own motion may at any time reconsider its action.

I. Any person whose license is revoked or who applies for renewal of registration and who is rejected by the Board shall have the right to appeal from such action pursuant to the Administrative Procedures Act.

J. 1. Any person who has been determined by the Board to have violated any provisions of the Oklahoma Nursing Practice Act or any rule or order issued pursuant thereto shall be liable for an administrative penalty not to exceed Five Hundred Dollars ($500.00) for each count for which any holder of a certificate or license has been determined to be in violation of the Oklahoma Nursing Practice Act or any rule promulgated or order issued pursuant thereto.

2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of this section, after notice and an opportunity for hearing is given to the accused. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to practice, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act.

K. The Board shall retain jurisdiction over any person issued a license, certificate or temporary license pursuant to this act, regardless of whether the license, certificate or temporary license has expired, lapsed or been relinquished during or after the alleged occurrence or conduct prescribed by this act.

L. In the event disciplinary action is imposed, any person so disciplined shall be responsible for any and all costs associated with satisfaction of the discipline imposed.

M. In the event disciplinary action is imposed in an administrative proceeding, the Board shall have the authority to recover the monies expended by the Board in pursuing any disciplinary action, including but not limited to costs of investigation, probation or monitoring fees, administrative costs, witness fees, attorney fees and court costs. This authority shall

be in addition to the Board's authority to impose discipline as set out in subsection A of this section.

N. The Executive Director shall immediately suspend the license of any person upon proof that the person has been sentenced to a period of continuous incarceration serving a penal sentence for commission of a misdemeanor or felony. The suspension shall remain in effect until the Board acts upon the licensee's written application for reinstatement of the license.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 567.18, is amended to read as follows:

Section 567.18. A. The criminal background check shall include a criminal history records search conducted by the Oklahoma State Bureau of Investigation that is not more than ninety (90) days old.

B. Contingent upon available resources by the Board, all criminal background checks effective January 1, 2013, ~~shall include all~~ are subject to the following:

1. Submission of a full set of fingerprints to the Board for the purpose of permitting a state and federal criminal history records search pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and Public Law ~~92-54~~ 92-544 that is not more than ninety (90) days old. The Oklahoma State Bureau of Investigation may exchange these fingerprints with the Federal Bureau of Investigation;

2. The applicant shall furnish the Board fingerprints as established by Board rules and a money order or cashier's check made payable to the Oklahoma State Bureau of Investigation or the Board's designated vendor;

3. The Board shall forward the fingerprints along with the applicable fee for a national fingerprint criminal history records search to the Bureau;

4. The Bureau shall retain one set of fingerprints in the Automated Fingerprint Identification System and submit the other set to the FBI for a national criminal history records search;

5. Any and all state and federal criminal history record information obtained by the Board from the Bureau or the FBI which is not already a matter of public record shall be deemed nonpublic. The confidential information shall be restricted to the exclusive use of the Board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure; and

6. Fingerprint images may be rejected by the OSBI and the FBI for a variety of reasons, including, but not limited to, fingerprint quality or an inability by the OSBI or FBI to classify the fingerprints. These rejections require the applicant to be fingerprinted again. Applicants with fingerprints rejected for improper registration will be required to re-register, re-pay and be

re-fingerprinted. Applicant is responsible for insuring and verifying that all data is correct in the fingerprinting process.

C. The necessary steps to initiate the criminal background checks may be performed by the Board or its designated vendor.

SECTION 5. This act shall become effective November 1, 2013.

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