

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1475

6 By: Yen of the Senate

7 and

8 Cox of the House

9 COMMITTEE SUBSTITUTE

10 An Act relating to physician licensure; amending 59
11 O.S. 2011, Section 492, which relates to the practice
12 of medicine and surgery; amending 59 O.S. 2011,
13 Section 622, as amended by Section 1, Chapter 83,
14 O.S.L. 2014 (59 O.S. Supp. 2015, Section 622), which
15 relates to physician licensure; prohibiting certain
16 construction; providing definitions; amending 59 O.S.
17 2011, Section 725.2, which relates to professional
18 designations; prohibiting physicians from certain
19 advertising; providing standards for compliance; and
20 providing an effective date.

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

22 SECTION 1. AMENDATORY 59 O.S. 2011, Section 492, is
23 amended to read as follows:

24 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

1 person is a physician, or who shall for a fee or any form of
2 compensation diagnose and/or treat disease, injury or deformity of
3 persons in this state by any allopathic legend drugs, surgery,
4 manual, or mechanical treatment unless otherwise authorized by law.

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

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

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

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

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

13 b. ~~Except~~ except as provided in subsection D of this
14 section, performance by a person within or outside of
15 this state, through an ongoing regular arrangement, of
16 diagnostic or treatment services, including but not
17 limited to, stroke prevention and treatment, through
18 electronic communications for any patient whose
19 condition is being diagnosed or treated within this
20 state by a physician duly licensed and practicing in
21 this state. A person who performs any of the
22 functions covered by this subparagraph submits himself
23 or herself to the jurisdiction of the courts of this
24

1 state for the purposes of any cause of action
2 resulting from the functions performed~~-, and~~

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

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

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

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

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

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

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

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

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

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

21 7. Any person licensed to practice medicine and surgery in
22 another state or territory of the United States who renders
23 emergency medical treatment or briefly provides critical medical
24 service at the specific lawful direction of a medical institution or

1 federal agency that assumes full responsibility for that treatment
2 or service and is approved by the Board;

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

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

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

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

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

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

5 G. Nothing in the Oklahoma Allopathic Medical and Surgical
6 Licensure and Supervision Act shall be construed as to require a
7 physician to secure a Maintenance of Certification (MOC) as a
8 condition of licensure, reimbursement, employment or admitting
9 privileges at a hospital in this state. For the purposes of this
10 subsection, "Maintenance of Certification (MOC)" shall mean a
11 continuing education program measuring core competencies in the
12 practice of medicine and surgery and approved by a nationally-
13 recognized accrediting organization.

14 SECTION 2. AMENDATORY 59 O.S. 2011, Section 622, as
15 amended by Section 1, Chapter 83, O.S.L. 2014 (59 O.S. Supp. 2015,
16 Section 622), is amended to read as follows:

17 Section 622. A. 1. Except as otherwise provided by this
18 section, it shall be unlawful for any person to practice as an
19 osteopathic physician and surgeon in this state, without a license
20 to do so, issued by the State Board of Osteopathic Examiners;
21 provided, that any license or certificate issued under the laws of
22 this state, authorizing its holder to practice osteopathic medicine,
23 shall remain in full force and effect. Persons who hold themselves
24 out as osteopathic physicians in this state without a license issued

1 by the State Board of Osteopathic Examiners submit themselves to the
2 jurisdiction of the State Board of Osteopathic Examiners.

3 2. Osteopathic physicians engaged in postgraduate training
4 beyond the internship year, also known as PGY-1, shall be licensed.
5 Osteopathic physicians engaged in the internship or PGY-1 year may
6 be eligible for a resident training license.

7 3. Osteopathic physicians engaged in interventional pain
8 management pursuant to the Oklahoma Interventional Pain Management
9 and Treatment Act shall be licensed by the State Board of
10 Osteopathic Examiners.

11 B. 1. A person within or outside of this state who performs
12 through electronic communications diagnostic or treatment services
13 within the scope of practice of an osteopathic physician and
14 surgeon, including but not limited to, stroke prevention and
15 treatment, for any patient whose condition is being diagnosed or
16 treated within this state shall be licensed in this state, pursuant
17 to the provisions of the Oklahoma Osteopathic Medicine Act.

18 However, in such cases, a nonresident osteopathic physician who,
19 while located outside this state, consults on an irregular basis
20 with a physician who is located in this state is not required to be
21 licensed in this state.

22 2. Any osteopathic physician licensed in this state who engages
23 in the prescription of drugs, devices, or treatments via electronic
24 means may do so only in the context of an appropriate

1 physician/patient relationship wherein a proper patient record is
2 maintained including, at the minimum, a current history and
3 physical.

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

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

19 C. A hospital or related institution, as such terms are defined
20 in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the
21 principal purpose or function of providing hospital or medical care,
22 including but not limited to any corporation, association, trust, or
23 other organization organized and operated for such purpose, may
24 employ one or more persons who are duly licensed to practice

1 osteopathic medicine in this state without being regarded as itself
2 practicing osteopathic medicine within the meaning and provisions of
3 this section. The employment by the hospital or related institution
4 of any person who is duly licensed shall not, in and of itself, be
5 considered as an act of unprofessional conduct by the person so
6 employed. Nothing provided herein shall eliminate, limit or
7 restrict the liability for any act or failure to act of any
8 hospital, any hospital's employees or persons duly licensed to
9 practice osteopathic medicine.

10 D. Nothing in the Oklahoma Osteopathic Medicine Act shall be
11 construed as to require an osteopathic physician to secure an
12 Osteopathic Continuous Certification (OCC) as a condition of
13 licensure, reimbursement, employment or admitting privileges at a
14 hospital in this state. For the purposes of this subsection,
15 "Osteopathic Continuous Certification (OCC)" shall mean a continuing
16 education program measuring core competencies in the practice of
17 medicine and surgery and approved by a nationally-recognized
18 accrediting organization.

19 SECTION 3. AMENDATORY 59 O.S. 2011, Section 725.2, is
20 amended to read as follows:

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

1 1. The letters "D.P.M." or the words podiatrist, doctor of
2 podiatry, podiatric surgeon⁷ or doctor of podiatric medicine by a
3 person licensed to practice podiatry under the Podiatric Medicine
4 Practice Act;

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

8 3. The letters "D.D.S." or "D.M.D.", as appropriate, or the
9 words dentist, doctor of dental surgery⁷ or doctor of dental
10 medicine, as appropriate, by a person licensed to practice dentistry
11 under the State Dental Act;

12 4. The letters "M.D." or the words surgeon, medical doctor⁷ or
13 doctor of medicine by a person licensed to practice medicine and
14 surgery under the Oklahoma Allopathic Medical and Surgical Licensure
15 and Supervision Act;

16 5. The letters "O.D." or the words optometrist or doctor of
17 optometry by a person licensed to practice optometry under Sections
18 581 through 606 of this title;

19 6. The letters "D.O." or the words surgeon, osteopathic
20 surgeon, osteopath, doctor of osteopathy⁷ or doctor of osteopathic
21 medicine by a person licensed to practice osteopathy under the
22 Oklahoma Osteopathic Medicine Act;

23 7. The letters "Ph.D.", "Ed.D."⁷ or "Psy.D." or the words
24 psychologist, therapist⁷ or counselor by a person licensed as a

1 health service psychologist pursuant to the Psychologists Licensing
2 Act;

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

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

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

23 C. Unless otherwise specifically provided in a particular
24 section or chapter of the Oklahoma Statutes, the word "physician" or

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

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

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

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

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

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

24

- 1 a. identify the type of license of the doctor utilizing
2 the letters or words set forth in this section if the
3 person is one of the classes of persons listed in
4 subsection A of this section, and referred to in
5 subsections B and C of this section, or
6 b. utilize appropriate, accepted, and easily understood
7 words or letters, which clearly show and indicate the
8 branch of the healing art in which the person is
9 licensed to practice and is engaged in, if the person
10 is not one of the nine classes of persons listed in
11 subsection A of this section, or referred to in
12 subsections B and C of this section.

13 2. The term "advertisement" includes any printed document
14 including letterhead, video clip, or audio clip created by, for, or
15 at the direction of the provider or providers and advertised for the
16 purpose of promoting the services of the doctor or provider.

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

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

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

15 H. It shall be unlawful for a medical doctor or a doctor of
16 osteopathic medicine to advertise as being certified by any public
17 or private board, including, but not limited to, the use of the term
18 "Board certified", unless the advertisement:

19 1. States the full name of the certifying board;

20 2. The certification is accurate, current and in good standing;

21 and

22 3. Is for a medical doctor or doctor of osteopathic medicine
23 who is certified by:

- 1 a. a member board of the American Board of Medical
2 Specialties (ABMS), the American Board of Physician
3 Specialties (ABPS) or the American Osteopathic
4 Association (AOA), or
5 b. a certifying board which requires successful
6 completion of a postgraduate training program approved
7 by the Accreditation Commission for Graduate Medical
8 Education (ACGME) or the AOA and which provides
9 complete training in the specialty or subspecialty
10 certified, followed by prerequisite certification by
11 the ABMS, ABPS or AOA board for that training field
12 and further successful completion of an examination in
13 the specialty or subspecialty certified.

14 I. Notwithstanding any other provision of this section, a
15 person licensed in this state to perform speech pathology or
16 audiology services is designated to be a practitioner of the healing
17 art for purposes of making a referral for speech pathology or
18 audiology services pursuant to the provisions of the Individuals
19 with Disabilities Education Act, Amendment of 1997, Public Law 105-
20 17, and Section 504 of the Rehabilitation Act of 1973.

21 SECTION 4. This act shall become effective November 1, 2016.

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