

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

AS AMENDED

By: Dahm of the Senate

and

Brumbaugh, **Strohm** and **Moore**
of the House

```
[ physician licensure - unprofessional conduct -
abortion - effective date ]
```

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, is amended to read as follows:

Section 509. The words "unprofessional conduct" as used in Sections 481 through 514 of this title are hereby declared to include, but shall not be limited to, the following:

1. Procuring, aiding or abetting a criminal operation;

2. The obtaining of any fee or offering to accept any fee, present or other form of remuneration whatsoever, on the assurance or promise that a manifestly incurable disease can or will be cured;

3. Willfully betraying a professional secret to the detriment of the patient;

4. Habitual intemperance or the habitual use of habit-forming drugs;

1 5. Conviction of a felony or of any offense involving moral
2 turpitude;

3 6. All advertising of medical business in which statements are
4 made which are grossly untrue or improbable and calculated to
5 mislead the public;

6 7. Conviction or confession of a crime involving violation of:

7 a. the antinarcotic or prohibition laws and regulations
8 of the federal government,

9 b. the laws of this state, or

10 c. State Board of Health rules;

11 8. Dishonorable or immoral conduct which is likely to deceive,
12 defraud, or harm the public;

13 9. The commission of any act which is a violation of the
14 criminal laws of any state when such act is connected with the
15 physician's practice of medicine. A complaint, indictment or
16 confession of a criminal violation shall not be necessary for the
17 enforcement of this provision. Proof of the commission of the act
18 while in the practice of medicine or under the guise of the practice
19 of medicine shall be unprofessional conduct;

20 10. Failure to keep complete and accurate records of purchase
21 and disposal of controlled drugs or of narcotic drugs;

22 11. The writing of false or fictitious prescriptions for any
23 drugs or narcotics declared by the laws of this state to be
24 controlled or narcotic drugs;

1 12. Prescribing or administering a drug or treatment without
2 sufficient examination and the establishment of a valid physician-
3 patient relationship;

4 13. The violation, or attempted violation, direct or indirect,
5 of any of the provisions of the Oklahoma Allopathic Medical and
6 Surgical Licensure and Supervision Act, either as a principal,
7 accessory or accomplice;

8 14. Aiding or abetting, directly or indirectly, the practice of
9 medicine by any person not duly authorized under the laws of this
10 state;

11 15. The inability to practice medicine with reasonable skill
12 and safety to patients by reason of age, illness, drunkenness,
13 excessive use of drugs, narcotics, chemicals, or any other type of
14 material or as a result of any mental or physical condition. In
15 enforcing this subsection the State Board of Medical Licensure and
16 Supervision may, upon probable cause, request a physician to submit
17 to a mental or physical examination by physicians designated by it.
18 If the physician refuses to submit to the examination, the Board
19 shall issue an order requiring the physician to show cause why the
20 physician will not submit to the examination and shall schedule a
21 hearing on the order within thirty (30) days after notice is served
22 on the physician. The physician shall be notified by either
23 personal service or by certified mail with return receipt requested.
24 At the hearing, the physician and the physician's attorney are

1 entitled to present any testimony and other evidence to show why the
2 physician should not be required to submit to the examination.
3 After a complete hearing, the Board shall issue an order either
4 requiring the physician to submit to the examination or withdrawing
5 the request for examination. The medical license of a physician
6 ordered to submit for examination may be suspended until the results
7 of the examination are received and reviewed by the Board;

8 16. Prescribing, dispensing or administering of controlled
9 substances or narcotic drugs in excess of the amount considered good
10 medical practice, or prescribing, dispensing or administering
11 controlled substances or narcotic drugs without medical need in
12 accordance with published standards;

13 17. Engaging in physical conduct with a patient which is sexual
14 in nature, or in any verbal behavior which is seductive or sexually
15 demeaning to a patient;

16 18. Failure to maintain an office record for each patient which
17 accurately reflects the evaluation, treatment, and medical necessity
18 of treatment of the patient;

19 19. Failure to provide necessary ongoing medical treatment when
20 a doctor-patient relationship has been established, which
21 relationship can be severed by either party providing a reasonable
22 period of time is granted; ~~or~~

23 20. Performance of an abortion as defined by Section 1-730 of
24 Title 63 of the Oklahoma Statutes with an intention other than to

1 increase the probability of a live birth, to preserve the life or
2 health of the child after live birth, to remove an ectopic
3 pregnancy, or to remove a dead unborn child who died as the result
4 of a spontaneous miscarriage, accidental trauma, or a criminal
5 assault on the pregnant female or her unborn child; or

6 21. Failure to provide a proper and safe medical facility
7 setting and qualified assistive personnel for a recognized medical
8 act, including but not limited to an initial in-person patient
9 examination, office surgery, diagnostic service or any other medical
10 procedure or treatment. Adequate medical records to support
11 diagnosis, procedure, treatment or prescribed medications must be
12 produced and maintained.

13 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, is
14 amended to read as follows:

15 Section 637. A. The State Board of Osteopathic Examiners may
16 refuse to admit a person to an examination or may refuse to issue or
17 reinstate or may suspend or revoke any license issued or reinstated
18 by the Board upon proof that the applicant or holder of such a
19 license:

20 1. Has obtained a license, license renewal or authorization to
21 sit for an examination, as the case may be, through fraud,
22 deception, misrepresentation or bribery; or has been granted a
23 license, license renewal or authorization to sit for an examination
24 based upon a material mistake of fact;

1 2. Has engaged in the use or employment of dishonesty, fraud,
2 misrepresentation, false promise, false pretense, unethical conduct
3 or unprofessional conduct, as may be determined by the Board, in the
4 performance of the functions or duties of an osteopathic physician,
5 including but not limited to the following:

- 6 a. obtaining or attempting to obtain any fee, charge,
7 tuition or other compensation by fraud, deception or
8 misrepresentation; willfully and continually
9 overcharging or overtreating patients; or charging for
10 visits to the physician's office which did not occur
11 or for services which were not rendered,
- 12 b. using intimidation, coercion or deception to obtain or
13 retain a patient or discourage the use of a second
14 opinion or consultation,
- 15 c. willfully performing inappropriate or unnecessary
16 treatment, diagnostic tests or osteopathic medical or
17 surgical services,
- 18 d. delegating professional responsibilities to a person
19 who is not qualified by training, skill, competency,
20 age, experience or licensure to perform them, noting
21 that delegation may only occur within an appropriate
22 doctor/patient relationship, wherein a proper patient
23 record is maintained including, but not limited to, at
24 the minimum, a current history and physical,

- 1 e. misrepresenting that any disease, ailment, or
2 infirmity can be cured by a method, procedure,
3 treatment, medicine or device,
- 4 f. acting in a manner which results in final disciplinary
5 action by any professional society or association or
6 hospital or medical staff of such hospital in this or
7 any other state, whether agreed to voluntarily or not,
8 if the action was in any way related to professional
9 conduct, professional competence, malpractice or any
10 other violation of the Oklahoma Osteopathic Medicine
11 Act,
- 12 g. signing a blank prescription form; or dispensing,
13 prescribing, administering or otherwise distributing
14 any drug, controlled substance or other treatment
15 without sufficient examination or the establishment of
16 a physician/patient relationship, or for other than
17 medically accepted therapeutic or experimental or
18 investigational purpose duly authorized by a state or
19 federal agency, or not in good faith to relieve pain
20 and suffering, or not to treat an ailment, physical
21 infirmity or disease, or violating any state or
22 federal law on controlled dangerous substances,
- 23 h. engaging in any sexual activity within a
24 physician/patient relationship,

1 i. terminating the care of a patient without adequate
2 notice or without making other arrangements for the
3 continued care of the patient,

4 j. failing to furnish a copy of a patient's medical
5 records upon a proper request from the patient or
6 legal agent of the patient or another physician; or
7 failing to comply with any other law relating to
8 medical records,

9 k. failing to comply with any subpoena issued by the
10 Board,

11 l. violating a probation agreement or order with this
12 Board or any other agency, and

13 m. failing to keep complete and accurate records of
14 purchase and disposal of controlled drugs or narcotic
15 drugs;

16 3. Has engaged in gross negligence, gross malpractice or gross
17 incompetence;

18 4. Has engaged in repeated acts of negligence, malpractice or
19 incompetence;

20 5. Has been finally adjudicated and found guilty, or entered a
21 plea of guilty or nolo contendere in a criminal prosecution, for any
22 offense reasonably related to the qualifications, functions or
23 duties of an osteopathic physician, or for any offense involving
24

1 moral turpitude, whether or not sentence is imposed, and regardless
2 of the pendency of an appeal;

3 6. Has had the authority to engage in the activities regulated
4 by the Board revoked, suspended, restricted, modified or limited, or
5 has been reprimanded, warned or censured, probated or otherwise
6 disciplined by any other state or federal agency whether or not
7 voluntarily agreed to by the physician including, but not limited
8 to, the denial of licensure, surrender of the license, permit or
9 authority, allowing the license, permit or authority to expire or
10 lapse, or discontinuing or limiting the practice of osteopathic
11 medicine pending disposition of a complaint or completion of an
12 investigation;

13 7. Has violated, or failed to comply with provisions of any act
14 or regulation administered by the Board;

15 8. Is incapable, for medical or psychiatric or any other good
16 cause, of discharging the functions of an osteopathic physician in a
17 manner consistent with the public's health, safety and welfare;

18 9. Has been guilty of advertising by means of knowingly false
19 or deceptive statements;

20 10. Has been guilty of advertising, practicing, or attempting
21 to practice under a name other than one's own;

22 11. Has violated or refused to comply with a lawful order of
23 the Board;

24

1 12. Has been guilty of habitual drunkenness, or habitual
2 addiction to the use of morphine, cocaine or other habit-forming
3 drugs;

4 13. Has been guilty of personal offensive behavior, which would
5 include, but not be limited to obscenity, lewdness, molestation and
6 other acts of moral turpitude; ~~and~~

7 14. Has performed an abortion as defined by Section 1-730 of
8 Title 63 of the Oklahoma Statutes with an intention other than to
9 increase the probability of a live birth, to preserve the life or
10 health of the child after live birth, to remove an ectopic
11 pregnancy, or to remove a dead unborn child who died as the result
12 of a spontaneous miscarriage, accidental trauma, or a criminal
13 assault on the pregnant female or her unborn child; and

14 15. Has been adjudicated to be insane, or incompetent, or
15 admitted to an institution for the treatment of psychiatric
16 disorders.

17 B. The State Board of Osteopathic Examiners shall neither
18 refuse to renew, nor suspend, nor revoke any license, however, for
19 any of these causes, unless the person accused has been given at
20 least twenty (20) days' notice in writing of the charge against him
21 or her and a public hearing by the State Board provided, three-
22 fourths (3/4) of a quorum present at a meeting may vote to suspend a
23 license in an emergency situation if the licensee affected is
24

1 provided a public hearing within thirty (30) days of the emergency
2 suspension.

3 C. The State Board of Osteopathic Examiners shall have the
4 power to order or subpoena the attendance of witnesses, the
5 inspection of records and premises and the production of relevant
6 books and papers for the investigation of matters that may come
7 before them. The presiding officer of said Board shall have the
8 authority to compel the giving of testimony as is conferred on
9 courts of justice.

10 D. Any osteopathic physician in the State of Oklahoma whose
11 license to practice osteopathic medicine is revoked or suspended
12 under the previous paragraphs of this section shall have the right
13 to seek judicial review of a ruling of the Board pursuant to the
14 Administrative Procedures Act.

15 E. The Board may enact rules and regulations pursuant to the
16 Administrative Procedures Act setting out additional acts of
17 unprofessional conduct; which acts shall be grounds for refusal to
18 issue or reinstate, or for action to condition, suspend or revoke a
19 license.

20 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-731, is
21 amended to read as follows:

22 Section 1-731. A. No person shall perform or induce an
23 abortion upon a pregnant woman ~~unless that person is a physician~~
24 ~~licensed to practice medicine in the State of Oklahoma.~~ Any person

1 violating this section shall be guilty of a felony punishable by
2 imprisonment for not less than one (1) year nor more than three (3)
3 years in the State Penitentiary.

4 B. Any physician participating in the performance of an
5 abortion shall be prohibited from obtaining or renewing a license to
6 practice medicine in this state. The State Board of Medical
7 Licensure and Supervision shall revoke the license of an allopathic
8 physician performing an abortion in this state. The State Board of
9 Osteopathic Examiners shall revoke the license of an osteopathic
10 physician performing an abortion in this state.

11 1. The provisions of this subsection shall not apply when an
12 abortion is performed:

- 13 a. to increase the probability of a live birth,
- 14 b. to preserve the life or health of the child after live
15 birth,
- 16 c. to remove an ectopic pregnancy, or
- 17 d. to remove a dead unborn child who died as the result
18 of a spontaneous miscarriage, accidental trauma, or a
19 criminal assault on the pregnant female or her unborn
20 child.

21 ~~B.~~ C. No person shall perform or induce an abortion upon a
22 pregnant woman subsequent to the end of the first trimester of her
23 pregnancy, unless such abortion is performed or induced in a general
24 hospital.

1 D. The State Board of Medical Licensure and Supervision, State
2 Board of Osteopathic Examiners, and State Board of Health shall
3 promulgate rules to implement the provisions of this act.

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

5 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
6 February 22, 2016 - DO PASS AS AMENDED
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24