

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

HOUSE BILL 2339

By: Ritze of the House

5 and

6 Yen of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to professions and occupations;
11 amending 59 O.S. 2011, Sections 488, 505, 509, 512,
12 as amended by Section 3, Chapter 176, O.S.L. 2014,
13 513 and 518.1 (59 O.S. Supp. 2016, Section 512),
14 which relate to the Oklahoma Allopathic Medical and
15 Surgical Licensure and Supervision Act; amending 74
16 O.S. 2011, Section 18c, as last amended by Section 1,
17 Chapter 31, O.S.L. 2016 (74 O.S. Supp. 2016, Section
18 18c,)), which relates to employment of attorneys,
19 authority of boards or officials; modifying
20 terminology; making language gender-neutral; making
21 certain meetings not required; permitting certain
22 review; requiring certain written notice; providing
23 certain construction; deleting certain authorization
24 and direction; modifying certain definition;
permitting Board to contract with agencies to perform
administrative services; permitting Board
investigators to perform certain services; providing
that licensees shall be deemed to have given consent
for Board investigators to inspect certain records;
providing consequences for certain refusal;
permitting application for search warrant; permitting
Board investigators to investigate records to
determine if licensee is in compliance with certain
laws; providing that Board investigators meeting
certain qualifications have jurisdiction to perform
certain duties; deleting requirement that physician's
license be revoked upon final felony conviction after
exhaustion of appellate process; deleting requirement

1 that suspension or revocation of license for certain
2 conviction be based on the merits; permitting certain
3 program to employ director for certain purpose and to
4 fix salary; permitting program to contract with
5 certain entities; providing certain exemption;
6 providing for codification; and providing an
7 effective date.

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

11 SECTION 1. AMENDATORY 59 O.S. 2011, Section 488, is
12 amended to read as follows:

13 Section 488. A. The Board may hold regular meetings at times
14 to be fixed by the president and secretary of the Board in
15 accordance with the provisions of the Oklahoma Open Meeting Act. In
16 addition, the president and secretary may call such special and
17 other meetings in accordance with the provisions of the Oklahoma
18 Open Meeting Act. A majority of the members of the Board shall
19 constitute a quorum for the transaction of business but a less
20 number may adjourn from time to time until a quorum is present.

21 B. No meeting as provided for in subsection A of this section
22 shall be required for the determination of the qualifications of an
23 applicant for a ~~certificate~~ license issued pursuant to the
24 provisions of Section 495 of this title. Each member of the Board
authorized to vote on licensure may review the qualifications of the
applicant during times other than when a regular or special meeting
is held, to determine the sufficiency of said qualifications. Each
member shall notify the secretary of his or her findings, in

1 writing. The provisions of this subsection shall not be construed
2 to prohibit the Board from reviewing the qualifications of an
3 applicant for licensure during any regular or special meeting of the
4 Board.

5 C. No meeting of an Advisory Committee under the jurisdiction
6 of the Board under Title 59 shall be required for the determination
7 of the qualifications of an applicant for a license. Each member of
8 the Advisory Committee authorized to make recommendations on
9 licensure may review the qualifications of the applicant during
10 times other than when a regular or special Advisory Committee
11 meeting is held, to determine the sufficiency of said
12 qualifications. Each member of the Advisory Committee shall notify
13 the Board Secretary of his or her recommendations, in writing. The
14 provisions of this subsection shall not be construed to prohibit the
15 Advisory Committee from reviewing the qualifications of an applicant
16 for licensure during any regular or special meeting of the Advisory
17 Committee.

18 SECTION 2. AMENDATORY 59 O.S. 2011, Section 505, is
19 amended to read as follows:

20 Section 505. It is hereby provided that the State of Oklahoma
21 is a proper and necessary party in the prosecution of all such
22 actions and hearings before the Board in all matters pertaining to
23 unprofessional conduct under the contemplation of this act, ~~and the~~
24 ~~Attorney General of the state, in person, or by deputy, is~~

1 ~~authorized and directed to appear in behalf thereof and the.~~ The
2 defendant in such action shall have the right to be represented by
3 counsel. The Board shall sit as a trial body and the rulings of the
4 president thereof in all questions shall be the rulings of the
5 Board, unless reversed by a majority vote of the Board upon appeal
6 thereto from such rulings of the president. The secretary shall
7 preserve a record of all proceedings in such hearings and shall
8 furnish a transcript thereof to the defendant upon request therefor,
9 provided the said defendant shall pay the actual cost of preparing
10 such transcript. If the services of a court reporter are requested,
11 the court reporter shall be reimbursed or paid by the party who made
12 such request.

13 SECTION 3. AMENDATORY 59 O.S. 2011, Section 509, is
14 amended to read as follows:

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

- 18 1. Procuring, aiding or abetting a criminal operation;
- 19 2. The obtaining of any fee or offering to accept any fee,
20 present or other form of remuneration whatsoever, on the assurance
21 or promise that a manifestly incurable disease can or will be cured;
- 22 3. Willfully betraying a professional secret to the detriment
23 of the patient;
- 24

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

3 5. Conviction or confession of, or plea of guilty, nolo
4 contendere, no contest or Alford plea to a felony or of any offense
5 involving moral turpitude;

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

9 7. Conviction or confession of, or plea of guilty, nolo
10 contendere, no contest or Alford plea to a crime involving violation
11 of:

- 12 a. the antinarcotic or prohibition laws and regulations
- 13 of the federal government,
- 14 b. the laws of this state, or
- 15 c. State Board of Health rules;

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

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

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

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

6 12. Prescribing or administering a drug or treatment without
7 sufficient examination and the establishment of a valid physician-
8 patient relationship;

9 13. The violation, or attempted violation, direct or indirect,
10 of any of the provisions of the Oklahoma Allopathic Medical and
11 Surgical Licensure and Supervision Act, either as a principal,
12 accessory or accomplice;

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

16 15. The inability to practice medicine with reasonable skill
17 and safety to patients by reason of age, illness, drunkenness,
18 excessive use of drugs, narcotics, chemicals, or any other type of
19 material or as a result of any mental or physical condition. In
20 enforcing this subsection the State Board of Medical Licensure and
21 Supervision may, upon probable cause, request a physician to submit
22 to a mental or physical examination by physicians designated by it.
23 If the physician refuses to submit to the examination, the Board
24 shall issue an order requiring the physician to show cause why the

1 physician will not submit to the examination and shall schedule a
2 hearing on the order within thirty (30) days after notice is served
3 on the physician. The physician shall be notified by either
4 personal service or by certified mail with return receipt requested.
5 At the hearing, the physician and the physician's attorney are
6 entitled to present any testimony and other evidence to show why the
7 physician should not be required to submit to the examination.
8 After a complete hearing, the Board shall issue an order either
9 requiring the physician to submit to the examination or withdrawing
10 the request for examination. The medical license of a physician
11 ordered to submit for examination may be suspended until the results
12 of the examination are received and reviewed by the Board;

13 16. Prescribing, dispensing or administering of controlled
14 substances or narcotic drugs in excess of the amount considered good
15 medical practice, or prescribing, dispensing or administering
16 controlled substances or narcotic drugs without medical need in
17 accordance with published standards;

18 17. Engaging in physical conduct with a patient which is sexual
19 in nature, or in any verbal behavior which is seductive or sexually
20 demeaning to a patient;

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

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

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

12 SECTION 4. AMENDATORY 59 O.S. 2011, Section 512, as
13 amended by Section 3, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2016,
14 Section 512), is amended to read as follows:

15 Section 512. The secretary of the State Board of Medical
16 Licensure and Supervision shall be paid an annual salary in an
17 amount fixed by the Board. The Board shall have the authority to
18 expend such funds as are necessary in carrying out the duties of the
19 Board and shall have the authority to hire all necessary personnel,
20 at salaries to be fixed by the Board, as the Board shall deem
21 necessary. The Board shall have the authority to hire attorneys to
22 represent the Board in all legal matters and to assist authorized
23 state and county officers in prosecuting or restraining violations
24

1 of Section 481 et seq. of this title, and to fix the salaries or per
2 diem of said attorneys.

3 The Board shall have the authority to hire one or more
4 investigators as may be necessary to carry out the provisions of
5 this act at an annual salary to be fixed by the Board. Such
6 investigators may be commissioned peace officers of this state. In
7 addition such investigators shall have the authority and duty to
8 investigate and inspect the records of all persons in order to
9 determine whether or not a disciplinary action for unprofessional
10 misconduct is warranted or whether the narcotic laws or the
11 dangerous drug laws have been complied with.

12 The Board is specifically authorized to contract with state
13 agencies or other bodies to perform investigative services or other
14 administrative services at a rate set by the Board.

15 The Board is authorized to pay the travel expenses of Board
16 employees and members in accordance with the State Travel
17 Reimbursement Act.

18 The expenditures authorized herein shall not be a charge against
19 the state, but the same shall be paid solely from the Board's
20 depository fund.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 512.1 of Title 59, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Investigators for the State Board of Medical Licensure and
2 Supervision shall perform such services as are necessary in the
3 investigation of criminal activity or preparation of administrative
4 actions.

5 B. Any licensee subject to the provisions of the Oklahoma
6 Allopathic Medical and Surgical Licensure and Supervision Act shall
7 be deemed to have given consent to any duly authorized investigator
8 of the Board to access, enter or inspect the records, either on-site
9 or at the Board office or facilities of such licensee or applicant
10 subject to the Oklahoma Allopathic Medical and Surgical Licensure
11 and Supervision Act. Refusal to allow such access, entry or
12 inspection may constitute grounds for the denial, nonrenewal,
13 suspension or revocation of a license. Upon refusal of such access,
14 entry or inspection, pursuant to this section, the Board or a duly
15 authorized representative may make application for and obtain a
16 search warrant from the district court where the facility or records
17 are located to allow such access, entry or inspection.

18 C. Investigators shall also have the authority and duty to
19 investigate and inspect the records of all persons in order to
20 determine whether the licensee is in compliance with applicable
21 narcotics and dangerous drug laws and regulations.

22 D. Any investigator certified as a peace officer by the Council
23 on Law Enforcement Education and Training shall have statewide
24 jurisdiction to perform the duties authorized by this section. In

1 addition, the investigator shall be considered a peace officer and
2 shall have the powers now or hereafter vested by law in peace
3 officers.

4 SECTION 6. AMENDATORY 59 O.S. 2011, Section 513, is
5 amended to read as follows:

6 Section 513. A. 1. The State Board of Medical Licensure and
7 Supervision is hereby given quasi-judicial powers while sitting as a
8 Board for the purpose of revoking, suspending or imposing other
9 disciplinary actions upon the license of physicians or surgeons of
10 this state, and appeals from its decisions shall be taken to the
11 Supreme Court of this state within thirty (30) days of the date that
12 a copy of the decision is mailed to the appellant, as shown by the
13 certificate of mailing attached to the decision.

14 2. The license of any physician or surgeon who has been
15 convicted of any felony in or without the State of Oklahoma and
16 whether in a state or federal court, may be suspended by the Board
17 upon the submission thereto of a certified copy of the judgment and
18 sentence of the trial court and the certificate of the clerk of the
19 court of the conviction.

20 3. Upon proof of a ~~final~~ felony conviction by the courts ~~and~~
21 ~~after exhaustion of the appellate process~~, the Board shall revoke
22 the physician's license. If the felony conviction is overturned on
23 appeal and no other appeals are sought, the Board shall restore the
24 license of the physician. ~~Suspension or revocation of the license~~

1 ~~of any person convicted of a felony on any other grounds than that~~
2 ~~of moral turpitude or the violation of the federal or state narcotic~~
3 ~~laws, shall be on the merits of the particular case, but the court~~
4 Court ~~records in the trial of such case when~~ of such a conviction
5 ~~has been had~~ shall be prima facie evidence of the conviction.

6 4. The Board shall also revoke and cancel the license of any
7 physician or surgeon who has been charged in a court of record of
8 this or other states of the United States or in the federal court
9 with the commission of a felony and who is a fugitive from justice,
10 upon the submission of a certified copy of the charge together with
11 a certificate from the clerk of the court that after the commitment
12 of the crime the physician or surgeon fled from the jurisdiction of
13 the court and is a fugitive from justice.

14 B. To the extent necessary to allow the Board the power to
15 enforce disciplinary actions imposed by the Board, in the exercise
16 of its authority, the Board may punish willful violations of its
17 orders and impose additional penalties as allowed by Section 509.1
18 of this title.

19 SECTION 7. AMENDATORY 59 O.S. 2011, Section 518.1, is
20 amended to read as follows:

21 Section 518.1. A. There is hereby established the Allied
22 Professional Peer Assistance Program to rehabilitate allied medical
23 professionals whose competency may be compromised because of the
24 abuse of drugs or alcohol, so that such allied medical professionals

1 can be treated and can return to or continue the practice of allied
2 medical practice in a manner which will benefit the public. The
3 program shall be under the supervision and control of the State
4 Board of Medical Licensure and Supervision.

5 B. The Board may appoint one or more peer assistance evaluation
6 advisory committees, hereinafter called the "allied peer assistance
7 committees". Each of these committees shall be composed of members,
8 the majority of which shall be licensed allied medical professionals
9 with expertise in chemical dependency. The allied peer assistance
10 committees shall function under the authority of the State Board of
11 Medical Licensure and Supervision in accordance with the rules of
12 the Board. The program may be one hundred percent (100%) outsourced
13 to professional groups specialized in this arena. The committee
14 members shall serve without pay, but may be reimbursed for the
15 expenses incurred in the discharge of their official duties in
16 accordance with the State Travel Reimbursement Act.

17 C. The Board may appoint and employ a qualified person or
18 persons to serve as program coordinators and shall fix such person's
19 compensation. The program may employ a director for purposes of
20 ongoing nonclerical administrative duties and shall fix the
21 director's compensation. The Board shall define the duties of the
22 program coordinators and director who shall report directly to the
23 Board.

1 D. The Board is authorized to adopt and revise rules, not
2 inconsistent with the Oklahoma Allopathic Medical and Surgical
3 Licensure and Supervision Act, as may be necessary to enable it to
4 carry into effect the provisions of this section.

5 E. A portion of licensing fees for each allied profession, not
6 to exceed Ten Dollars (\$10.00), may be used to implement and
7 maintain the Allied Professional Peer Assistance Program.

8 F. All monies paid pursuant to subsection E of this section
9 shall be deposited in an agency special account revolving fund under
10 the State Board of Medical Licensure and Supervision, and shall be
11 used for the general operating expenses of the Allied Professional
12 Peer Assistance Program, including payment of personal services.

13 G. Records and management information system of the
14 professionals enrolled in the Allied Professional Peer Assistance
15 Program and reports shall be maintained in the program office in a
16 place separate and apart from the records of the Board. The records
17 shall be made public only by subpoena and court order; provided
18 however, confidential treatment shall be cancelled upon default by
19 the professional in complying with the requirements of the program.

20 H. Any person making a report to the Board or to an allied peer
21 assistance committee regarding a professional suspected of
22 practicing allied medical practice while habitually intemperate or
23 addicted to the use of habit-forming drugs, or a professional's
24 progress or lack of progress in rehabilitation, shall be immune from

1 any civil or criminal action resulting from such reports, provided
2 such reports are made in good faith.

3 I. A professional's participation in the Allied Professional
4 Peer Assistance Program in no way precludes additional proceedings
5 by the Board for acts or omissions of acts not specifically related
6 to the circumstances resulting in the professional's entry into the
7 program. However, in the event the professional defaults from the
8 program, the Board may discipline the professional for those acts
9 which led to the professional entering the program.

10 J. The Executive Director of the Board shall suspend the
11 license immediately upon notification that the licensee has
12 defaulted from the Allied Professional Peer Assistance Program, and
13 shall assign a hearing date for the matter to be presented to the
14 Board.

15 K. All treatment information, whether or not recorded, and all
16 communications between a professional and therapist are both
17 privileged and confidential. In addition, the identity of all
18 persons who have received or are receiving treatment services shall
19 be considered confidential and privileged.

20 L. As used in this section, unless the context otherwise
21 requires:

22 1. "Board" means the State Board of Medical Licensure and
23 Supervision; and
24

1 2. "Allied peer assistance committee" means the peer assistance
2 evaluation advisory committee created in this section, which is
3 appointed by the State Board of Medical Licensure and Supervision to
4 carry out specified duties.

5 M. The Allied Professional Peer Assistance Program may contract
6 with outside entities for services that are not available to it or
7 can be obtained for a lesser cost through such a contract. The
8 contract shall be ratified by the Board.

9 SECTION 8. AMENDATORY 74 O.S. 2011, Section 18c, as last
10 amended by Section 1, Chapter 31, O.S.L. 2016 (74 O.S. Supp. 2016,
11 Section 18c), is amended to read as follows:

12 Section 18c. A. 1. Except as otherwise provided by this
13 subsection, no state officer, board or commission shall have
14 authority to employ or appoint attorneys to advise or represent said
15 officer, board or commission in any matter.

16 2. The provisions of this subsection shall not apply to the
17 Corporation Commission, the Council on Law Enforcement Education and
18 Training, the Consumer Credit Commission, the Board of Managers of
19 the State Insurance Fund, the Oklahoma Tax Commission, the
20 Commissioners of the Land Office, the Oklahoma Public Welfare
21 Commission also known as the Commission for Human Services, the
22 State Board of Corrections, the Oklahoma Health Care Authority, the
23 Department of Public Safety, the Oklahoma State Bureau of Narcotics
24 and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement

Commission, the Transportation Commission, the Oklahoma Energy Resources Board, the Oklahoma Merit Protection Commission, the Office of Management and Enterprise Services, the Oklahoma Water Resources Board, the Department of Labor, the Department of Agriculture, Food, and Forestry, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma Conservation Commission, the Office of Juvenile Affairs, the State Board of Pharmacy, the Board of Medical Licensure and Supervision and until January 1, 2022, the Oklahoma Department of Veterans Affairs.

3. The provisions of paragraph 2 of this subsection shall not be construed to authorize the Office of Juvenile Affairs to employ any attorneys that are not specifically authorized by law.

4. All the legal duties of such officer, board or commission shall devolve upon and are hereby vested in the Attorney General; provided that:

- a. the Governor shall have authority to employ special counsel to protect the rights or interest of the state as provided in Section 6 of this title, and
- b. liquidation agents of banks shall have the authority to employ local counsel, with the consent of the Bank

1 Commissioner and the Attorney General and the approval
2 of the district court.

3 B. At the request of any state officer, board or commission,
4 except the Corporation Commission, the Board of Managers of the
5 CompSource Oklahoma, Oklahoma Tax Commission and the Commissioners
6 of the Land Office, the Grand River Dam Authority, the Oklahoma
7 State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
8 Beverage Laws Enforcement Commission, the Oklahoma Firefighters
9 Pension and Retirement System, the Oklahoma Public Employees
10 Retirement System, the Uniform Retirement System for Justices and
11 Judges and the Interstate Oil and Gas Compact Commission, the
12 Attorney General shall defend any action in which they may be sued
13 in their official capacity. At the request of any such state
14 officer, board or commission, the Attorney General shall have
15 authority to institute suits in the name of the State of Oklahoma on
16 their relation, if after investigation the Attorney General is
17 convinced there is sufficient legal merit to justify the action.

18 C. Any officer, board, or commission which has the authority to
19 employ or appoint attorneys may request that the Attorney General
20 defend any action arising pursuant to the provisions of The
21 Governmental Tort Claims Act.

22 D. Nothing in this section shall be construed to repeal or
23 affect the provisions of the statutes of this state pertaining to
24 attorneys and legal advisors of the several commissions and

1 departments of state specified in subsection B of this section, and
2 all acts and parts of acts pertaining thereto shall be and remain in
3 full force and effect.

4 SECTION 9. This act shall become effective November 1, 2017.

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