

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 HOUSE BILL 2518

By: Ownbey of the House

5 and

6 Simpson of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to professions and occupations;
11 amending 59 O.S. 2011, Section 567.8, as last amended
12 by Section 3, Chapter 281, O.S.L. 2017 (59 O.S. Supp.
13 2017, Section 567.8), which relates to certain powers
14 of the Oklahoma Board of Nursing; providing that
15 certain material mailed to an individual's address of
16 record be deemed legally served; amending 59 O.S.
17 2011, Section 4, as amended by Section 228, Chapter
18 228, O.S.L. 2013 (59 O.S. Supp. 2017, Section
19 567.18), which relates to criminal background checks;
20 requiring individual applying for multistate license
21 to submit to criminal background check; providing
22 certain exception; and providing an effective date.

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

24 SECTION 1. AMENDATORY 59 O.S. 2011, Section 567.8, as
last amended by Section 3, Chapter 281, O.S.L. 2017 (59 O.S. Supp.
2017, 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, single-state or multistate,
- b. licensure to practice as a Registered Nurse, single-state or multistate,
- c. multistate privilege to practice in Oklahoma,
- d. licensure to practice as an Advanced Practice Registered Nurse,
- e. certification to practice as an Advanced Unlicensed Assistant,
- f. authorization for prescriptive authority, or
- g. authority to order, select, obtain and administer drugs;

2. To assess administrative penalties; and

3. To otherwise discipline applicants, licensees or 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 that 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, and/or a license to practice advanced practice registered nursing with or without

1 either prescriptive authority recognition or
2 authorization to order, select, obtain and administer
3 drugs, or

4 b. certification as an Advanced Unlicensed Assistant;

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

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

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

18 5. Exhibits through a pattern of practice or other behavior
19 actual or potential inability to practice nursing with sufficient
20 knowledge or reasonable skills and safety due to impairment caused
21 by illness, use of alcohol, drugs, chemicals or any other substance,
22 or as a result of any mental or physical condition, including
23 deterioration through the aging process or loss of motor skills,
24 mental illness, or disability that results in inability to practice

1 with reasonable judgment, skill or safety; provided, however, the
2 provisions of this paragraph shall not be utilized in a manner that
3 conflicts with the provisions of the Americans with Disabilities
4 Act;

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

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

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

13 9. Violated a rule promulgated by the Board, an order of the
14 Board, or a state or federal law relating to the practice of
15 registered, practical or advanced practice registered nursing or
16 advanced unlicensed assisting, or a state or federal narcotics or
17 controlled dangerous substance law;

18 10. Has had disciplinary actions taken against the individual's
19 registered or practical nursing license, advanced unlicensed
20 assistive certification, or any professional or occupational
21 license, registration or certification in this or any state,
22 territory or country;

23 11. Has defaulted and/or been terminated from the peer
24 assistance program for any reason;

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

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

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

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

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

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

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

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

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

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

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

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

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

9 M. In the event disciplinary action is imposed in an
10 administrative proceeding, the Board shall have the authority to
11 recover the monies expended by the Board in pursuing any
12 disciplinary action, including but not limited to costs of
13 investigation, probation or monitoring fees, administrative costs,
14 witness fees, attorney fees and court costs. This authority shall
15 be in addition to the Board's authority to impose discipline as set
16 out in subsection A of this section.

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

23 O. When a majority of the officers of the Board, which
24 constitutes the President, Vice President and Secretary/Treasurer,

1 find that preservation of the public health, safety or welfare
2 requires immediate action, summary suspension of licensure or
3 certification may be ordered before the filing of a sworn complaint
4 or at any other time before the outcome of an individual proceeding.
5 The summary suspension of licensure or certification may be ordered
6 without compliance with the requirements of the Oklahoma Open
7 Meeting Act. Within seven (7) days after the summary suspension,
8 the licensee shall be notified by letter that summary suspension has
9 occurred. The summary suspension letter shall include notice of the
10 date of the proposed hearing to be held in accordance with Oklahoma
11 Administrative Code 485:10-11-2 and the Administrative Procedures
12 Act, within ninety (90) days of the date of the summary suspension
13 letter, and shall be signed by one of the Board officers.

14 P. In any proceeding in which the Board is required to serve an
15 order on an individual, the Board may send such material to the
16 individual's address of record with the Board. If the order is
17 returned with a notation by the United States Postal Service
18 indicating that it is undeliverable for any reason, and the records
19 of the Board indicate that the Board has not received any change of
20 address since the order was sent, as required by the rules of the
21 Board, the order and any subsequent material relating to the same
22 matter sent to the most recent address on file with the Board shall
23 be deemed by the court as having been legally served for all
24 purposes.

1 SECTION 2. AMENDATORY 59 O.S. 2011, Section 4, as
2 amended by Section 228, Chapter 228, O.S.L. 2013 (59 O.S. Supp.
3 2017, Section 567.18), is amended to read as follows:

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

7 B. Contingent upon available resources by the Board, all
8 criminal background checks effective January 1, 2013, are subject to
9 the following:

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

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

20 3. The Board shall forward the fingerprints along with the
21 applicable fee for a national fingerprint criminal history records
22 search to the Bureau;
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1 4. The Bureau shall retain one set of fingerprints in the
2 Automated Fingerprint Identification System and submit the other set
3 to the FBI for a national criminal history records search;

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

11 6. Fingerprint images may be rejected by the OSBI and the FBI
12 for a variety of reasons, including, but not limited to, fingerprint
13 quality or an inability by the OSBI or FBI to classify the
14 fingerprints. These rejections require the applicant to be
15 fingerprinted again. Applicants with fingerprints rejected for
16 improper registration will be required to re-register, re-pay and be
17 re-fingerprinted. Applicant is responsible for insuring and
18 verifying that all data is correct in the fingerprinting process.

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

21 D. An individual applying for any type of multistate license
22 shall submit a criminal background check that complies with this
23 section; provided, however, that if the individual has been
24 continuously enrolled in the Federal Bureau of Investigation's Rap

1 Back Service since issuance of the initial multistate license, the
2 individual shall not be required to undergo another criminal history
3 record search.

4 SECTION 3. This act shall become effective November 1, 2018.

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2018 - DO
7 PASS, As Coauthored.
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