

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1209

By: Brecheen

6 AS INTRODUCED

7 An Act relating to abortion; amending 59 O.S. 2011,
8 Sections 509 and 637, which relate to unprofessional
conduct; broadening certain definitions to include
9 certain acts; amending 63 O.S. 2011, Section 1-731,
which relates to violations; requiring State Board of
10 Medical Licensure and Supervision and State Board of
Osteopathic Examiners to revoke licenses for certain
11 acts; prohibiting certain acts; specifying certain
exceptions; directing promulgation of rules; updating
12 language; and providing an effective date.

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

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

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

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

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

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

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

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

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

11 a. the antinarcotic or prohibition laws and regulations
12 of the federal government,

13 b. the laws of this state, or

14 c. State Board of Health rules;

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

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

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

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

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

21 Section 637. A. The State Board of Osteopathic Examiners may
22 refuse to admit a person to an examination or may refuse to issue or
23 reinstate or may suspend or revoke any license issued or reinstated
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1 by the Board upon proof that the applicant or holder of such a
2 license:

3 1. Has obtained a license, license renewal or authorization to
4 sit for an examination, as the case may be, through fraud,
5 deception, misrepresentation or bribery; or has been granted a
6 license, license renewal or authorization to sit for an examination
7 based upon a material mistake of fact;

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

13 a. obtaining or attempting to obtain any fee, charge,
14 tuition or other compensation by fraud, deception or
15 misrepresentation; willfully and continually
16 overcharging or overtreating patients; or charging for
17 visits to the physician's office which did not occur
18 or for services which were not rendered,

19 b. using intimidation, coercion or deception to obtain or
20 retain a patient or discourage the use of a second
21 opinion or consultation,

22 c. willfully performing inappropriate or unnecessary
23 treatment, diagnostic tests or osteopathic medical or
24 surgical services,

- 1 d. delegating professional responsibilities to a person
2 who is not qualified by training, skill, competency,
3 age, experience or licensure to perform them, noting
4 that delegation may only occur within an appropriate
5 doctor/patient relationship, wherein a proper patient
6 record is maintained including, but not limited to, at
7 the minimum, a current history and physical,
- 8 e. misrepresenting that any disease, ailment, or
9 infirmity can be cured by a method, procedure,
10 treatment, medicine or device,
- 11 f. acting in a manner which results in final disciplinary
12 action by any professional society or association or
13 hospital or medical staff of such hospital in this or
14 any other state, whether agreed to voluntarily or not,
15 if the action was in any way related to professional
16 conduct, professional competence, malpractice or any
17 other violation of the Oklahoma Osteopathic Medicine
18 Act,
- 19 g. signing a blank prescription form; or dispensing,
20 prescribing, administering or otherwise distributing
21 any drug, controlled substance or other treatment
22 without sufficient examination or the establishment of
23 a physician/patient relationship, or for other than
24 medically accepted therapeutic or experimental or

- investigational purpose duly authorized by a state or federal agency, or not in good faith to relieve pain and suffering, or not to treat an ailment, physical infirmity or disease, or violating any state or federal law on controlled dangerous substances,
- h. engaging in any sexual activity within a physician/patient relationship,
 - i. terminating the care of a patient without adequate notice or without making other arrangements for the continued care of the patient,
 - j. failing to furnish a copy of a patient's medical records upon a proper request from the patient or legal agent of the patient or another physician; or failing to comply with any other law relating to medical records,
 - k. failing to comply with any subpoena issued by the Board,
 - l. violating a probation agreement or order with this Board or any other agency, and
 - m. failing to keep complete and accurate records of purchase and disposal of controlled drugs or narcotic drugs;

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

1 4. Has engaged in repeated acts of negligence, malpractice or
2 incompetence;

3 5. Has been finally adjudicated and found guilty, or entered a
4 plea of guilty or nolo contendere in a criminal prosecution, for any
5 offense reasonably related to the qualifications, functions or
6 duties of an osteopathic physician, or for any offense involving
7 moral turpitude, whether or not sentence is imposed, and regardless
8 of the pendency of an appeal;

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

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

21 8. Is incapable, for medical or psychiatric or any other good
22 cause, of discharging the functions of an osteopathic physician in a
23 manner consistent with the public's health, safety and welfare;
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1 9. Has been guilty of advertising by means of knowingly false
2 or deceptive statements;

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

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

7 12. Has been guilty of habitual drunkenness, or habitual
8 addiction to the use of morphine, cocaine or other habit-forming
9 drugs;

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

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

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

23 B. The State Board of Osteopathic Examiners shall neither
24 refuse to renew, nor suspend, nor revoke any license, however, for

1 any of these causes, unless the person accused has been given at
2 least twenty (20) days' notice in writing of the charge against him
3 or her and a public hearing by the State Board provided, three-
4 fourths (3/4) of a quorum present at a meeting may vote to suspend a
5 license in an emergency situation if the licensee affected is
6 provided a public hearing within thirty (30) days of the emergency
7 suspension.

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

15 D. Any osteopathic physician in the State of Oklahoma whose
16 license to practice osteopathic medicine is revoked or suspended
17 under the previous paragraphs of this section shall have the right
18 to seek judicial review of a ruling of the Board pursuant to the
19 Administrative Procedures Act.

20 E. The Board may enact rules and regulations pursuant to the
21 Administrative Procedures Act setting out additional acts of
22 unprofessional conduct; which acts shall be grounds for refusal to
23 issue or reinstate, or for action to condition, suspend or revoke a
24 license.

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

3 Section 1-731. A. No person shall perform or induce an
4 abortion upon a pregnant woman unless that person is a physician
5 licensed to practice medicine in the State of Oklahoma. Any person
6 violating this section shall be guilty of a felony punishable by
7 imprisonment for not less than one (1) year nor more than three (3)
8 years in the State Penitentiary.

9 B. No person shall perform or induce an abortion upon a
10 pregnant woman subsequent to the end of the first trimester of her
11 pregnancy, unless such abortion is performed or induced in a general
12 hospital.

13 C. Any physician participating in the performance of an
14 abortion shall be prohibited from obtaining or renewing a license to
15 practice medicine in this state. The State Board of Medical
16 Licensure and Supervision shall revoke the license of an allopathic
17 physician performing an abortion in this state. The State Board of
18 Osteopathic Examiners shall revoke the license of an osteopathic
19 physician performing an abortion in this state.

20 D. No person shall perform or induce an abortion upon a
21 pregnant woman with an intention other than to increase the
22 probability of a live birth, to preserve the life or health of the
23 child after live birth, to remove an ectopic pregnancy or to remove
24 a dead unborn child who died as the result of a spontaneous

1 miscarriage, accidental trauma or a criminal assault on the pregnant
2 female or her unborn child.

3 E. The State Board of Medical Licensure and Supervision, State
4 Board of Osteopathic Examiners, and State Board of Health shall
5 promulgate rules to implement the provisions of this act.

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

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