

1 STATE OF OKLAHOMA

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

3 SENATE BILL134

By: Yen

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5  
6 AS INTRODUCED

7 An Act relating to physician advertising; amending 59  
8 O.S. 2011, Section 509, which relates to  
9 unprofessional conduct; broadening certain condition;  
10 providing definitions; requiring certain information  
11 on advertisements; specifying contents; prohibiting  
12 use of certain term under certain circumstances;  
13 requiring display of certain information; providing  
14 certain exception; directing promulgation of rules;  
15 amending 59 O.S. 2011, Section 725.2, which relates  
16 to designations; expanding certain definition to  
17 include certain acts; providing for codification; and  
18 providing an effective date.

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

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

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

- 25 1. Procuring, aiding or abetting a criminal operation;
- 26 2. The obtaining of any fee or offering to accept any fee,  
27 present or other form of remuneration whatsoever, on the assurance  
28 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, including but not limited to violations of the  
10 provisions of Section 3 of this act;

11           7. Conviction or confession of a crime involving violation 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;

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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 2. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 509.2 of Title 59, unless there  
14 is created a duplication in numbering, reads as follows:

15 As used in this act:

16 1. "Advertisement" means any communication or statement,  
17 whether printed, electronic or oral, that names the health care  
18 practitioner in relation to his or her practice, profession or  
19 institution in which the individual is employed, volunteers or  
20 otherwise provides health care services, including but not limited  
21 to, business cards, letterhead, patient brochures, e-mail, Internet,  
22 audio and video and any other communication or statement used in the  
23 course of business;

24

1        2. "Deceptive" or "misleading" means, but is not limited to,  
2 any advertisement or affirmative communication or representation  
3 that misstates, falsely describes, holds out or falsely details the  
4 health care practitioner's profession, skills, training, expertise,  
5 education, board certification or licensure; and

6        3. "Physician" means an allopathic physician licensed pursuant  
7 to the provisions of the Oklahoma Allopathic Medical and Surgical  
8 Licensure and Supervision Act or an osteopathic physician licensed  
9 pursuant to the provisions of the Oklahoma Osteopathic Medicine Act.

10        SECTION 3.        NEW LAW        A new section of law to be codified  
11 in the Oklahoma Statutes as Section 509.3 of Title 59, unless there  
12 is created a duplication in numbering, reads as follows:

13        A. An advertisement for health care services that names a  
14 physician shall identify the type of license held by the physician.  
15 The advertisement shall be free from any and all deceptive or  
16 misleading information.

17        B. A physician may not hold oneself out to the public in any  
18 manner as being certified by a public or private board including,  
19 but not limited to, a multidisciplinary board or "board certified,"  
20 unless all of the following criteria are satisfied:

21        1. The advertisement states the full name of the certifying  
22 board;

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

1       3. The board either:

2           a. is a member board of the American Board of Medical  
3               Specialties (ABMS) or the American Osteopathic  
4               Association (AOA), or

5           b. requires successful completion of a postgraduate  
6               training program approved by the Accreditation Council  
7               for Graduate Medical Education (ACGME) or the AOA that  
8               provides complete training in the specialty or  
9               subspecialty certified, followed by prerequisite  
10              certification by the ABMS or AOA board for that  
11              training field and further successful completion of  
12              examination in the specialty or subspecialty certified.

13       C. A physician providing health care services in this state must  
14       conspicuously post and affirmatively communicate the physician's  
15       specific licensure as defined by the Oklahoma Allopathic Medical and  
16       Surgical Licensure and Supervision Act or the Oklahoma Osteopathic  
17       Medicine Act. Such posting shall consist of the following:

18           1. The health care practitioner shall wear a photo  
19              identification name tag of sufficient size and be worn in a  
20              conspicuous manner so as to be visible and apparent during all  
21              patient encounters. The identification tag shall include:

- 22              a. a recent photograph of the employee,  
23              b. the employee's name,

- 1           c.    the type of license (e.g. "medical doctor",  
2                    "psychologist", "nurse practitioner", "podiatrist"),  
3                    and  
4           d.    the expiration date of the license;

5           2.    The physician shall display in his or her office a writing  
6 that clearly identifies the type of license held by the physician.  
7 The writing shall be of sufficient size so as to be visible and  
8 apparent to all current and prospective patients; and

9           3.    A physician who practices in more than one office shall be  
10 required to comply with these requirements in each practice setting.

11           D.    A physician who supervises or participates in collaborative  
12 practice agreements with non-M.D. or non-D.O. physicians shall be  
13 required to conspicuously post in each office a schedule of the  
14 regular hours when he or she will be present in that office.

15           E.    The provisions of this section shall not apply to physicians  
16 working in non-patient care settings and who do not have any direct  
17 patient care interactions.

18           F.    The State Board of Medical Licensure and Supervision and the  
19 State Board of Osteopathic Examiners shall promulgate rules to  
20 implement the provisions of this section.

21           SECTION 4.        AMENDATORY        59 O.S. 2011, Section 725.2, is  
22 amended to read as follows:

23           Section 725.2.   A.   The following nine classes of persons may  
24 use the word "Doctor", or an abbreviation thereof, and shall have

1 the right to use, whether or not in conjunction with the word  
2 "Doctor", or any abbreviation thereof, the following designations:

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

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

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

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

18 5. The letters "O.D." or the words optometrist or doctor of  
19 optometry by a person licensed to practice optometry under Sections  
20 581 through 606 of this title;

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

1           7. The letters "Ph.D.", "Ed.D.", or "Psy.D." or the words  
2 psychologist, therapist, or counselor by a person licensed as a  
3 health service psychologist pursuant to the Psychologists Licensing  
4 Act;

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

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

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

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

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

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

14 2. Any other person using the term doctor or any abbreviation  
15 thereof.

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

24

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

3 a. identify the type of license of the doctor utilizing  
4 the letters or words set forth in this section if the  
5 person is one of the classes of persons listed in  
6 subsection A of this section, and referred to in  
7 subsections B and C of this section, or

8 b. utilize appropriate, accepted, and easily understood  
9 words or letters, which clearly show and indicate the  
10 branch of the healing art in which the person is  
11 licensed to practice and is engaged in, if the person  
12 is not one of the nine classes of persons listed in  
13 subsection A of this section, or referred to in  
14 subsections B and C of this section.

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

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

1 training and the license under which the person is authorized to  
2 practice.

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

5 a. such statement or act in any advertising medium,

6 b. making a false statement regarding the education,  
7 skills, training, or licensure of a person, ~~or~~

8 c. in any other way describing the profession, skills,  
9 training, expertise, education, or licensure of a

10 person in a fashion that causes the public, a

11 potential patient, or current patient to believe that

12 the person is a medical doctor, doctor of osteopathic

13 medicine, doctor of dental surgery, doctor of dental

14 medicine, doctor of optometry, doctor of podiatry, or

15 doctor of chiropractic when that person does not hold

16 such credentials, or

17 d. the definitions provided by Section 2 of this act.

18 H. Notwithstanding any other provision of this section, a

19 person licensed in this state to perform speech pathology or

20 audiology services is designated to be a practitioner of the healing

21 art for purposes of making a referral for speech pathology or

22 audiology services pursuant to the provisions of the Individuals

23 with Disabilities Education Act, Amendment of 1997, Public Law 105-

24 17, and Section 504 of the Rehabilitation Act of 1973.

1 SECTION 5. This act shall become effective November 1, 2017.

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