

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 1859

By: Scott

COMMITTEE SUBSTITUTE

An Act relating to abortion; amending 59 O.S. 2011, Sections 509, as last amended by Section 6, Chapter 428, O.S.L. 2019 and 637, as amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Sections 509 and 637), which relate to unprofessional conduct of medical doctor and unprofessional conduct of doctor of osteopathy; broadening certain definitions to include certain acts; amending Section 4, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019, Section 1-745.14), which relates to fetal heartbeat; reducing time period for certain requirements; deleting procedural provisions related to detection of fetal heartbeat; requiring certain submission to the State Department of Health and certain licensing boards; prohibiting abortion under certain circumstances; broadening provisions to include fetal or embryonic brain waves; providing and modifying certain construction; prohibiting issuance or renewal of physician license for certain acts; requiring State Board of Medical Licensure and Supervision and State Board of Osteopathic Examiners to revoke licenses for certain acts; providing certain exception; modifying certain construction; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last amended by Section 6, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Section 509), is amended to read as follows:

Section 509. The words "unprofessional conduct" as used in Sections 481 through 518.1 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;
5. Conviction of a felony or of any offense involving moral turpitude;
6. All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
7. Conviction or confession of a crime involving violation of:
 - a. the antinarcotic or prohibition laws and regulations of the federal government,
 - b. the laws of this state, or
 - c. State Board of Health rules;

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

3 9. The commission of any act which is a violation of the
4 criminal laws of any state when such act is connected with the
5 physician's practice of medicine. A complaint, indictment or
6 confession of a criminal violation shall not be necessary for the
7 enforcement of this provision. Proof of the commission of the act
8 while in the practice of medicine or under the guise of the practice
9 of medicine shall be unprofessional conduct;

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

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

15 12. Prescribing or administering a drug or treatment without
16 sufficient examination and the establishment of a valid physician-
17 patient relationship;

18 13. The violation, or attempted violation, direct or indirect,
19 of any of the provisions of the Oklahoma Allopathic Medical and
20 Surgical Licensure and Supervision Act, either as a principal,
21 accessory or accomplice;

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

1 15. The inability to practice medicine with reasonable skill
2 and safety to patients by reason of age, illness, drunkenness,
3 excessive use of drugs, narcotics, chemicals, or any other type of
4 material or as a result of any mental or physical condition. In
5 enforcing this subsection the State Board of Medical Licensure and
6 Supervision may, upon probable cause, request a physician to submit
7 to a mental or physical examination by physicians designated by it.
8 If the physician refuses to submit to the examination, the Board
9 shall issue an order requiring the physician to show cause why the
10 physician will not submit to the examination and shall schedule a
11 hearing on the order within thirty (30) days after notice is served
12 on the physician. The physician shall be notified by either
13 personal service or by certified mail with return receipt requested.
14 At the hearing, the physician and the physician's attorney are
15 entitled to present any testimony and other evidence to show why the
16 physician should not be required to submit to the examination.
17 After a complete hearing, the Board shall issue an order either
18 requiring the physician to submit to the examination or withdrawing
19 the request for examination. The medical license of a physician
20 ordered to submit for examination may be suspended until the results
21 of the examination are received and reviewed by the Board;

22 16. a. Prescribing, dispensing or administering of controlled
23 substances or narcotic drugs in excess of the amount
24 considered good medical practice,

b. prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with pertinent licensing board standards, or

c. prescribing, dispensing or administering opioid drugs in excess of the maximum limits authorized in Section 2-309I of Title 63 of the Oklahoma Statutes;

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

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

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

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

1 21. Violation of the provisions of Section 1-745.14 of Title 63
2 of the Oklahoma Statutes.

3 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as
4 amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019,
5 Section 637), is amended to read as follows:

6 Section 637. A. The State Board of Osteopathic Examiners may
7 refuse to admit a person to an examination or may refuse to issue or
8 reinstate or may suspend or revoke any license issued or reinstated
9 by the Board upon proof that the applicant or holder of such a
10 license:

11 1. Has obtained a license, license renewal or authorization to
12 sit for an examination, as the case may be, through fraud,
13 deception, misrepresentation or bribery; or has been granted a
14 license, license renewal or authorization to sit for an examination
15 based upon a material mistake of fact;

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

21 a. obtaining or attempting to obtain any fee, charge,
22 tuition or other compensation by fraud, deception or
23 misrepresentation; willfully and continually
24 overcharging or overtreating patients; or charging for

- visits to the physician's office which did not occur
or for services which were not rendered,
- b. using intimidation, coercion or deception to obtain or retain a patient or discourage the use of a second opinion or consultation,
 - c. willfully performing inappropriate or unnecessary treatment, diagnostic tests or osteopathic medical or surgical services,
 - d. delegating professional responsibilities to a person who is not qualified by training, skill, competency, age, experience or licensure to perform them, noting that delegation may only occur within an appropriate doctor-patient relationship, wherein a proper patient record is maintained including, but not limited to, at the minimum, a current history and physical,
 - e. misrepresenting that any disease, ailment, or infirmity can be cured by a method, procedure, treatment, medicine or device,
 - f. acting in a manner which results in final disciplinary action by any professional society or association or hospital or medical staff of such hospital in this or any other state, whether agreed to voluntarily or not, if the action was in any way related to professional conduct, professional competence, malpractice or any

1 other violation of the Oklahoma Osteopathic Medicine
2 Act,

3 g. signing a blank prescription form; or dispensing,
4 prescribing, administering or otherwise distributing
5 any drug, controlled substance or other treatment
6 without sufficient examination or the establishment of
7 a physician-patient relationship, or for other than
8 medically accepted therapeutic or experimental or
9 investigational purpose duly authorized by a state or
10 federal agency, or not in good faith to relieve pain
11 and suffering, or not to treat an ailment, physical
12 infirmity or disease, or violating any state or
13 federal law on controlled dangerous substances
14 including, but not limited to, prescribing, dispensing
15 or administering opioid drugs in excess of the maximum
16 limits authorized in Section 2-309I of Title 63 of the
17 Oklahoma Statutes,

18 h. engaging in any sexual activity within a physician-
19 patient relationship,

20 i. terminating the care of a patient without adequate
21 notice or without making other arrangements for the
22 continued care of the patient,

23 j. failing to furnish a copy of a patient's medical
24 records upon a proper request from the patient or

1 legal agent of the patient or another physician; or
2 failing to comply with any other law relating to
3 medical records,

4 k. failing to comply with any subpoena issued by the
5 Board,

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

8 m. failing to keep complete and accurate records of
9 purchase and disposal of controlled drugs or narcotic
10 drugs;

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

13 4. Has engaged in repeated acts of negligence, malpractice or
14 incompetence;

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

21 6. Has had the authority to engage in the activities regulated
22 by the Board revoked, suspended, restricted, modified or limited, or
23 has been reprimanded, warned or censured, probated or otherwise
24 disciplined by any other state or federal agency whether or not

1 voluntarily agreed to by the physician including, but not limited
2 to, the denial of licensure, surrender of the license, permit or
3 authority, allowing the license, permit or authority to expire or
4 lapse, or discontinuing or limiting the practice of osteopathic
5 medicine pending disposition of a complaint or completion of an
6 investigation;

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

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

12 9. Has been guilty of advertising by means of knowingly false
13 or deceptive statements;

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

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

18 12. Has been guilty of habitual drunkenness, or habitual
19 addiction to the use of morphine, cocaine or other habit-forming
20 drugs;

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

1 14. Has been adjudicated to be insane, or incompetent, or
2 admitted to an institution for the treatment of psychiatric
3 disorders; and

4 15. Has violated the provisions of Section 1-745.14 of Title 63
5 of the Oklahoma Statutes.

6 B. The State Board of Osteopathic Examiners shall neither
7 refuse to renew, nor suspend, nor revoke any license, however, for
8 any of these causes, unless the person accused has been given at
9 least twenty (20) days' notice in writing of the charge against him
10 or her and a public hearing by the Board provided, three-fourths
11 (3/4) of a quorum present at a meeting may vote to suspend a license
12 in an emergency situation if the licensee affected is provided a
13 public hearing within thirty (30) days of the emergency suspension.

14 C. The State Board of Osteopathic Examiners shall have the
15 power to order or subpoena the attendance of witnesses, the
16 inspection of records and premises and the production of relevant
17 books and papers for the investigation of matters that may come
18 before them. The presiding officer of the Board shall have the
19 authority to compel the giving of testimony as is conferred on
20 courts of justice.

21 D. Any osteopathic physician in the State of Oklahoma whose
22 license to practice osteopathic medicine is revoked or suspended
23 under this section shall have the right to seek judicial review of a
24 ruling of the Board pursuant to the Administrative Procedures Act.

1 E. The Board may enact rules and regulations pursuant to the
2 Administrative Procedures Act setting out additional acts of
3 unprofessional conduct; which acts shall be grounds for refusal to
4 issue or reinstate, or for action to condition, suspend or revoke a
5 license.

6 SECTION 3. AMENDATORY Section 4, Chapter 159, O.S.L.
7 2012 (63 O.S. Supp. 2019, Section 1-745.14), is amended to read as
8 follows:

9 Section 1-745.14. A. Any abortion provider who knowingly
10 performs or induces any abortion shall comply with the requirements
11 of the Heartbeat Informed Consent Act.

12 B. Prior to a woman giving informed consent to having any part
13 of an abortion performed or induced, if the pregnancy is at least
14 ~~eight (8)~~ six (6) weeks after fertilization, the abortion provider
15 who is to perform or induce the abortion or an agent of the abortion
16 provider shall ~~tell the woman that it may be possible to make:~~

17 1. Determine if the embryonic or fetal heartbeat of the unborn
18 child is audible ~~for the pregnant woman to hear and ask the woman if~~
19 ~~she would like to hear the heartbeat. If the woman would like to~~
20 ~~hear the heartbeat, the abortion provider shall, using a Doppler~~
21 ~~fetal heart rate monitor, make the embryonic or fetal heartbeat of~~
22 ~~the unborn child audible for the pregnant woman to hear~~ and visible;

23 2. Verify the presence or absence of fetal or embryonic brain
24 waves; and

1 3. Submit a copy of the sonogram and the electroencephalogram
2 to the State Department of Health and the provider's licensing
3 board.

4 C. 1. No physician shall perform an abortion if the physician
5 determines the embryonic or fetal heartbeat is audible or visible,
6 or if fetal brain waves are detected.

7 2. An abortion provider or an agent of the abortion provider
8 shall not be in violation of the requirements of this subsection if:

9 ~~1. The~~

10 a. the provider or agent has attempted, consistent with
11 standard medical practice, to make the embryonic or
12 fetal heartbeat of the unborn child audible and
13 visible for the pregnant woman to hear and see using a
14 Doppler ultrasound and a fetal heart rate monitor.

15 ~~2. That~~

16 b. that attempt does not result in the heartbeat being
17 made audible or visible, and

18 ~~3. The~~

19 c. the provider has offered to attempt to make the
20 heartbeat audible and visible at a subsequent date.

21 3. An abortion provider or an agent of the abortion provider
22 shall not be in violation of the requirements of this subsection if:

23 a. the provider or agent has attempted, consistent with
24 standard medical practice, to detect embryonic or

1 fetal brain waves of the unborn child using
2 electroencephalography,

3 b. that attempt does not result in the detection of brain
4 waves, and

5 c. the provider has offered to attempt to detect brain
6 waves at a subsequent date.

7 D. 1. A physician found to be in violation of this section
8 shall be prohibited from obtaining or renewing a license to practice
9 medicine in this state. The State Board of Medical Licensure and
10 Supervision shall revoke the license of a medical doctor who is
11 found to have violated the provision of this section. The State
12 Board of Osteopathic Examiners shall revoke the license of a doctor
13 of osteopathy who is found to have violated the provisions of this
14 section.

15 2. The provisions of this section shall not apply to an
16 abortion necessary to prevent the death of the pregnant woman, or to
17 prevent substantial or irreversible physical impairment of the
18 pregnant woman that substantially increases the risk of death. The
19 performance of an abortion on the basis of the mental or emotional
20 health of the mother shall be grounds for denial or revocation of a
21 medical license.

22 ~~C.~~ E. Nothing in this section shall be construed to prevent the
23 pregnant woman from not listening to the sounds detected by the
24 Doppler fetal heart rate monitor or not viewing the brain waves

1 detected by the electroencephalography pursuant to the requirements
2 of ~~subsection B~~ of this section.

3 SECTION 4. This act shall become effective November 1, 2020.

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