

1 ENGROSSED SENATE
2 BILL NO. 81

By: Simpson of the Senate

3 and

4 Newton of the House

5
6 An Act relating to the Oklahoma Nursing Practice Act;
7 amending 59 O.S. 2011, Section 567.4a, as amended by
8 Section 2, Chapter 281, O.S.L. 2017 (59 O.S. Supp.
9 2018, Section 567.4a), which relates to prescriptive
10 authority recognition; broadening certain education
11 requirement; amending 59 O.S. 2011, Section 567.8, as
12 last amended by Section 1, Chapter 72, O.S.L. 2018
(59 O.S. Supp. 2018, Section 567.8), which relates to
denial, revocation or suspension of license or
certification; setting forth certain provisions
relating to confidential investigative records;
updating statutory references; and providing an
effective date.

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

16 SECTION 1. AMENDATORY 59 O.S. 2011, Section 567.4a, as
17 amended by Section 2, Chapter 281, O.S.L. 2017 (59 O.S. Supp. 2018,
18 Section 567.4a), is amended to read as follows:

19 Section 567.4a. The rules regarding prescriptive authority
20 recognition promulgated by the Oklahoma Board of Nursing pursuant to
21 paragraphs 6 through 9, 11 and 12 of Section 567.3a of this title
22 shall:

23 1. Define the procedure for documenting supervision by a
24 physician licensed in Oklahoma to practice by the State Board of

1 Medical Licensure and Supervision or the State Board of Osteopathic
2 Examiners. Such procedure shall include a written statement that
3 defines appropriate referral, consultation, and collaboration
4 between the Advanced Practice Registered Nurse, recognized to
5 prescribe as defined in paragraphs 6 through 9, 11 and 12 of Section
6 567.3a of this title, and the supervising physician. The written
7 statement shall include a method of assuring availability of the
8 supervising physician through direct contact, telecommunications or
9 other appropriate electronic means for consultation, assistance with
10 medical emergencies, or patient referral. The written statement
11 shall be part of the initial application and the renewal application
12 submitted to the Board for recognition for prescriptive authority
13 for the Advanced Practice Registered Nurse. Changes to the written
14 statement shall be filed with the Board within thirty (30) days of
15 the change and shall be effective on filing;

16 2. Define minimal requirements for initial application for
17 prescriptive authority which shall include, but not be limited to,
18 evidence of completion of a minimum of forty-five (45) contact hours
19 or three (3) academic credit hours of education in
20 pharmacotherapeutics, clinical application, and use of
21 pharmacological agents in the prevention of illness, and in the
22 restoration and maintenance of health in a program beyond basic
23 registered nurse preparation, approved by the Board. Such contact
24 hours or academic credits shall be obtained within a time period of

1 three (3) years immediately preceding the date of application for
2 prescriptive authority;

3 3. Define minimal requirements for application for renewal of
4 prescriptive authority which shall include, but not be limited to,
5 documentation of a minimum of fifteen (15) contact hours or one (1)
6 academic credit hour of education in pharmacotherapeutics, clinical
7 application, and use of pharmacological agents in the prevention of
8 illness, and in the restoration and maintenance of health in a
9 program beyond basic registered nurse preparation, approved by the
10 Board, within the two-year period immediately preceding the
11 effective date of application for renewal of prescriptive authority;

12 4. Require that beginning July 1, 2002, an Advanced Practice
13 Registered Nurse shall demonstrate successful completion of a
14 master's degree or higher in a clinical nurse specialty in order to
15 be eligible for initial application for prescriptive authority under
16 the provisions of ~~this act~~ the Oklahoma Nursing Practice Act;

17 5. Define the method for communicating authority to prescribe
18 or termination of same, and the formulary to the Board of Pharmacy,
19 all pharmacies, and all registered pharmacists;

20 6. Define terminology used in such rules;

21 7. Define the parameters for the prescribing practices of the
22 Advanced Practice Registered Nurse;

23 8. Define the methods for termination of prescriptive authority
24 for the Advanced Practice Registered Nurse; and

1 9. a. Establish a Formulary Advisory Council that shall
2 develop and submit to the Board recommendations for an
3 exclusionary formulary that shall list drugs or
4 categories of drugs that shall not be prescribed by
5 Advanced Practice Registered Nurse recognized to
6 prescribe by the Oklahoma Board of Nursing. The
7 Formulary Advisory Council shall also develop and
8 submit to the Board recommendations for practice-
9 specific prescriptive standards for each category of
10 Advanced Practice Registered Nurse recognized to
11 prescribe by the Oklahoma Board of Nursing pursuant to
12 the provisions of the Oklahoma Nursing Practice Act.
13 The Board shall either accept or reject the
14 recommendations made by the Council. No amendments to
15 the recommended exclusionary formulary may be made by
16 the Board without the approval of the Formulary
17 Advisory Council.

18 b. The Formulary Advisory Council shall be composed of
19 twelve (12) members as follows:

20 (1) four members, to include a pediatrician, an
21 obstetrician-gynecological physician, a general
22 internist, and a family practice physician;
23 provided that three of such members shall be
24 appointed by the Oklahoma State Medical

1 Association, and one shall be appointed by the
2 Oklahoma Osteopathic Association,

3 (2) four members who are registered pharmacists,
4 appointed by the Oklahoma Pharmaceutical
5 Association, and

6 (3) four members, one of whom shall be a Certified
7 Nurse Practitioner, one of whom shall be a
8 Clinical Nurse Specialist, one of whom shall be a
9 Certified Nurse-Midwife, and one of whom shall be
10 a current member of the Oklahoma Board of
11 Nursing, all of whom shall be appointed by the
12 Oklahoma Board of Nursing.

13 c. All professional members of the Formulary Advisory
14 Council shall be in active clinical practice, at least
15 fifty percent (50%) of the time, within their defined
16 area of specialty. The members of the Formulary
17 Advisory Council shall serve at the pleasure of the
18 appointing authority for a term of three (3) years.
19 The terms of the members shall be staggered. Members
20 of the Council may serve beyond the expiration of
21 their term of office until a successor is appointed by
22 the original appointing authority. A vacancy on the
23 Council shall be filled for the balance of the
24 unexpired term by the original appointing authority.

1 d. Members of the Council shall elect a chair and a vice-
2 chair from among the membership of the Council. For
3 the transaction of business, at least seven members,
4 with a minimum of two members present from each of the
5 identified categories of physicians, pharmacists and
6 advanced practice registered nurses, shall constitute
7 a quorum. The Council shall recommend and the Board
8 shall approve and implement an initial exclusionary
9 formulary on or before January 1, 1997. The Council
10 and the Board shall annually review the approved
11 exclusionary formulary and shall make any necessary
12 revisions utilizing the same procedures used to
13 develop the initial exclusionary formulary.

14 SECTION 2. AMENDATORY 59 O.S. 2011, Section 567.8, as
15 last amended by Section 1, Chapter 72, O.S.L. 2018 (59 O.S. Supp.
16 2018, Section 567.8), is amended to read as follows:

17 Section 567.8. A. The Oklahoma Board of Nursing shall have the
18 power to take any or all of the following actions:

19 1. To deny, revoke or suspend any:

- 20 a. licensure to practice as a Licensed Practical Nurse,
21 single-state or multistate,
- 22 b. licensure to practice as a Registered Nurse, single-
23 state or multistate,
- 24 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 either prescriptive authority recognition or authorization to order, select, obtain and administer drugs, or
- b. certification as an Advanced Unlicensed Assistant;

2. Is guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of any licensee or Advanced

1 Unlicensed Assistant, or any offense an essential element of which
2 is fraud, dishonesty, or an act of violence, or for any offense
3 involving moral turpitude, whether or not sentence is imposed, or
4 any conduct resulting in the revocation of a deferred or suspended
5 sentence or probation imposed pursuant to such conviction;

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

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

12 5. Exhibits through a pattern of practice or other behavior
13 actual or potential inability to practice nursing with sufficient
14 knowledge or reasonable skills and safety due to impairment caused
15 by illness, use of alcohol, drugs, chemicals or any other substance,
16 or as a result of any mental or physical condition, including
17 deterioration through the aging process or loss of motor skills,
18 mental illness, or disability that results in inability to practice
19 with reasonable judgment, skill or safety; provided, however, the
20 provisions of this paragraph shall not be utilized in a manner that
21 conflicts with the provisions of the Americans with Disabilities
22 Act;

23 6. Has been adjudicated as mentally incompetent, mentally ill,
24 chemically dependent or dangerous to the public or has been

1 committed by a court of competent jurisdiction, within or without
2 this state;

3 7. Is guilty of unprofessional conduct as defined in the rules
4 of the Board;

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

7 9. Violated a rule promulgated by the Board, an order of the
8 Board, or a state or federal law relating to the practice of
9 registered, practical or advanced practice registered nursing or
10 advanced unlicensed assisting, or a state or federal narcotics or
11 controlled dangerous substance law;

12 10. Has had disciplinary actions taken against the individual's
13 registered or practical nursing license, advanced unlicensed
14 assistive certification, or any professional or occupational
15 license, registration or certification in this or any state,
16 territory or country;

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

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

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

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

4 D. The Board may cause to be investigated all reported
5 violations of the Oklahoma Nursing Practice Act. Information
6 obtained during an investigation into possible violations of the
7 Oklahoma Nursing Practice Act shall be kept confidential, but may be
8 introduced by the state in administrative proceedings before the
9 Board, whereupon the information admitted becomes a public record.
10 Public records maintained by the agency are administrative records,
11 not public civil or criminal records.

12 Confidential investigative records shall not be subject to
13 discovery or subpoena in any civil or criminal proceeding, except
14 that the Board may give such information to law enforcement and
15 other state agencies as necessary and appropriate in the discharge
16 of the duties of that agency and only under circumstances that
17 ensure against unauthorized access to the information.

18 E. The Board may authorize the Executive Director to issue a
19 confidential letter of concern to a licensee when evidence does not
20 warrant formal proceedings, but the Executive Director has noted
21 indications of possible errant conduct that could lead to serious
22 consequences and formal action.

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

1 G. At a hearing the accused shall have the right to appear
2 either personally or by counsel, or both, to produce witnesses and
3 evidence on behalf of the accused, to cross-examine witnesses and to
4 have subpoenas issued by the designated Board staff. If the accused
5 is found guilty of the charges the Board may refuse to issue a
6 renewal of license to the applicant, revoke or suspend a license, or
7 otherwise discipline a licensee.

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

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

15 J. 1. Any person who has been determined by the Board to have
16 violated any provisions of the Oklahoma Nursing Practice Act or any
17 rule or order issued pursuant thereto shall be liable for an
18 administrative penalty not to exceed Five Hundred Dollars (\$500.00)
19 for each count for which any holder of a certificate or license has
20 been determined to be in violation of the Oklahoma Nursing Practice
21 Act or any rule promulgated or order issued pursuant thereto.

22 2. The amount of the penalty shall be assessed by the Board
23 pursuant to the provisions of this section, after notice and an
24 opportunity for hearing is given to the accused. In determining the

1 amount of the penalty, the Board shall include, but not be limited
2 to, consideration of the nature, circumstances, and gravity of the
3 violation and, with respect to the person found to have committed
4 the violation, the degree of culpability, the effect on ability of
5 the person to continue to practice, and any show of good faith in
6 attempting to achieve compliance with the provisions of the Oklahoma
7 Nursing Practice Act.

8 K. The Board shall retain jurisdiction over any person issued a
9 license, certificate or temporary license pursuant to ~~this act~~ the
10 Oklahoma Nursing Practice Act, regardless of whether the license,
11 certificate or temporary license has expired, lapsed or been
12 relinquished during or after the alleged occurrence or conduct
13 prescribed by ~~this act~~ the Oklahoma Nursing Practice Act.

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

17 M. In the event disciplinary action is imposed in an
18 administrative proceeding, the Board shall have the authority to
19 recover the monies expended by the Board in pursuing any
20 disciplinary action, including but not limited to costs of
21 investigation, probation or monitoring fees, administrative costs,
22 witness fees, attorney fees and court costs. This authority shall
23 be in addition to the Board's authority to impose discipline as set
24 out in subsection A of this section.

1 N. The Executive Director shall immediately suspend the license
2 of any person upon proof that the person has been sentenced to a
3 period of continuous incarceration serving a penal sentence for
4 commission of a misdemeanor or felony. The suspension shall remain
5 in effect until the Board acts upon the licensee's written
6 application for reinstatement of the license.

7 O. When a majority of the officers of the Board, which
8 constitutes the President, Vice President and Secretary/Treasurer,
9 find that preservation of the public health, safety or welfare
10 requires immediate action, summary suspension of licensure or
11 certification may be ordered before the filing of a sworn complaint
12 or at any other time before the outcome of an individual proceeding.
13 The summary suspension of licensure or certification may be ordered
14 without compliance with the requirements of the Oklahoma Open
15 Meeting Act. Within seven (7) days after the summary suspension,
16 the licensee shall be notified by letter that summary suspension has
17 occurred. The summary suspension letter shall include notice of the
18 date of the proposed hearing to be held in accordance with Oklahoma
19 Administrative Code 485:10-11-2 and the Administrative Procedures
20 Act, within ninety (90) days of the date of the summary suspension
21 letter, and shall be signed by one of the Board officers.

22 P. In any proceeding in which the Board is required to serve an
23 order on an individual, the Board may send such material to the
24 individual's address of record with the Board. If the order is

1 returned with a notation by the United States Postal Service
2 indicating that it is undeliverable for any reason, and the records
3 of the Board indicate that the Board has not received any change of
4 address since the order was sent, as required by the rules of the
5 Board, the order and any subsequent material relating to the same
6 matter sent to the most recent address on file with the Board shall
7 be deemed by the court as having been legally served for all
8 purposes.

9 SECTION 3. This act shall become effective November 1, 2019.

10 Passed the Senate the 11th day of March, 2019.

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Presiding Officer of the Senate

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14 Passed the House of Representatives the ____ day of _____,
15 2019.

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Presiding Officer of the House
of Representatives

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