

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1786

By: Dahm

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5  
6 AS INTRODUCED

7 An Act relating to abortion; amending 59 O.S. 2011,  
8 Section 509, as last amended by Section 6, Chapter  
9 428, O.S.L. 2019 (59 O.S. Supp. 2019, Section 509),  
10 which relates to unprofessional conduct of medical  
11 doctor; amending 59 O.S. 2011, Section 637, as  
12 amended by Section 12, Chapter 428, O.S.L. 2019 (59  
13 O.S. Supp. 2019, Section 637), which relates to  
14 unprofessional conduct of doctor of osteopathy;  
15 broadening certain definitions to include certain  
16 acts; amending 63 O.S. 2011, Section 1-731, which  
17 relates to abortion; prohibiting issuance or renewal  
18 of physician license for certain acts; requiring  
19 State Board of Medical Licensure and Supervision and  
20 State Board of Osteopathic Examiners to revoke  
21 licenses for certain acts; providing certain  
22 exceptions; directing promulgation of rules; and  
23 providing an effective date.

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

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

28 Section 509. The words "unprofessional conduct" as used in  
29 Sections 481 through 518.1 of this title are hereby declared to  
30 include, but shall not be limited to, the following:

- 1        1. Procuring, aiding or abetting a criminal operation;
- 2        2. The obtaining of any fee or offering to accept any fee,  
3 present or other form of remuneration whatsoever, on the assurance  
4 or promise that a manifestly incurable disease can or will be cured;
- 5        3. Willfully betraying a professional secret to the detriment  
6 of the patient;
- 7        4. Habitual intemperance or the habitual use of habit-forming  
8 drugs;
- 9        5. Conviction of a felony or of any offense involving moral  
10 turpitude;
- 11       6. All advertising of medical business in which statements are  
12 made which are grossly untrue or improbable and calculated to  
13 mislead the public;
- 14       7. Conviction or confession of a crime involving violation of:  
15        a. the antinarcotic or prohibition laws and regulations  
16              of the federal government,  
17        b. the laws of this state, or  
18        c. State Board of Health rules;
- 19       8. Dishonorable or immoral conduct which is likely to deceive,  
20 defraud, or harm the public;
- 21       9. The commission of any act which is a violation of the  
22 criminal laws of any state when such act is connected with the  
23 physician's practice of medicine. A complaint, indictment or  
24 confession of a criminal violation shall not be necessary for the

1 enforcement of this provision. Proof of the commission of the act  
2 while in the practice of medicine or under the guise of the practice  
3 of medicine shall be unprofessional conduct;

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

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

9 12. Prescribing or administering a drug or treatment without  
10 sufficient examination and the establishment of a valid physician-  
11 patient relationship;

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

16 14. Aiding or abetting, directly or indirectly, the practice of  
17 medicine by any person not duly authorized under the laws of this  
18 state;

19 15. The inability to practice medicine with reasonable skill  
20 and safety to patients by reason of age, illness, drunkenness,  
21 excessive use of drugs, narcotics, chemicals, or any other type of  
22 material or as a result of any mental or physical condition. In  
23 enforcing this subsection the State Board of Medical Licensure and  
24 Supervision may, upon probable cause, request a physician to submit

1 to a mental or physical examination by physicians designated by it.  
2 If the physician refuses to submit to the examination, the Board  
3 shall issue an order requiring the physician to show cause why the  
4 physician will not submit to the examination and shall schedule a  
5 hearing on the order within thirty (30) days after notice is served  
6 on the physician. The physician shall be notified by either  
7 personal service or by certified mail with return receipt requested.  
8 At the hearing, the physician and the physician's attorney are  
9 entitled to present any testimony and other evidence to show why the  
10 physician should not be required to submit to the examination.  
11 After a complete hearing, the Board shall issue an order either  
12 requiring the physician to submit to the examination or withdrawing  
13 the request for examination. The medical license of a physician  
14 ordered to submit for examination may be suspended until the results  
15 of the examination are received and reviewed by the Board;

- 16 16. a. Prescribing, dispensing or administering of controlled  
17 substances or narcotic drugs in excess of the amount  
18 considered good medical practice,  
19 b. prescribing, dispensing or administering controlled  
20 substances or narcotic drugs without medical need in  
21 accordance with pertinent licensing board standards,  
22 or  
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1 c. prescribing, dispensing or administering opioid drugs  
2 in excess of the maximum limits authorized in Section  
3 2-309I of Title 63 of the Oklahoma Statutes;

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

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

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

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

21 21. Performance of an abortion as defined by Section 1-730 of  
22 Title 63 of the Oklahoma Statutes, except that an abortion necessary  
23 to preserve the life of the mother shall not be grounds for denial  
24 or revocation of a medical license. No such condition may be

1 determined to exist if it is based on a claim or diagnosis that the  
2 woman may engage in conduct which she intends to result in her  
3 death.

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

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

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

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

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

1           overcharging or overtreating patients; or charging for  
2           visits to the physician's office which did not occur  
3           or for services which were not rendered,

4           b.    using intimidation, coercion or deception to obtain or  
5           retain a patient or discourage the use of a second  
6           opinion or consultation,

7           c.    willfully performing inappropriate or unnecessary  
8           treatment, diagnostic tests or osteopathic medical or  
9           surgical services,

10          d.    delegating professional responsibilities to a person  
11          who is not qualified by training, skill, competency,  
12          age, experience or licensure to perform them, noting  
13          that delegation may only occur within an appropriate  
14          doctor-patient relationship, wherein a proper patient  
15          record is maintained including, but not limited to, at  
16          the minimum, a current history and physical,

17          e.    misrepresenting that any disease, ailment, or  
18          infirmity can be cured by a method, procedure,  
19          treatment, medicine or device,

20          f.    acting in a manner which results in final disciplinary  
21          action by any professional society or association or  
22          hospital or medical staff of such hospital in this or  
23          any other state, whether agreed to voluntarily or not,  
24          if the action was in any way related to professional

1           conduct, professional competence, malpractice or any  
2           other violation of the Oklahoma Osteopathic Medicine  
3           Act,

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

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

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

1 j. failing to furnish a copy of a patient's medical  
2 records upon a proper request from the patient or  
3 legal agent of the patient or another physician; or  
4 failing to comply with any other law relating to  
5 medical records,

6 k. failing to comply with any subpoena issued by the  
7 Board,

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

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

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

15 4. Has engaged in repeated acts of negligence, malpractice or  
16 incompetence;

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

23 6. Has had the authority to engage in the activities regulated  
24 by the Board revoked, suspended, restricted, modified or limited, or

1 has been reprimanded, warned or censured, probated or otherwise  
2 disciplined by any other state or federal agency whether or not  
3 voluntarily agreed to by the physician including, but not limited  
4 to, the denial of licensure, surrender of the license, permit or  
5 authority, allowing the license, permit or authority to expire or  
6 lapse, or discontinuing or limiting the practice of osteopathic  
7 medicine pending disposition of a complaint or completion of an  
8 investigation;

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

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

14 9. Has been guilty of advertising by means of knowingly false  
15 or deceptive statements;

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

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

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

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

4 14. Has been adjudicated to be insane, or incompetent, or  
5 admitted to an institution for the treatment of psychiatric  
6 disorders; and

7 15. Performance of an abortion as defined by Section 1-730 of  
8 Title 63 of the Oklahoma Statutes, except that an abortion necessary  
9 to preserve the life of the mother shall not be grounds for denial  
10 or revocation of a medical license. No such condition may be  
11 determined to exist if it is based on a claim or diagnosis that the  
12 woman may engage in conduct which she intends to result in her  
13 death.

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

23 C. The State Board of Osteopathic Examiners shall have the  
24 power to order or subpoena the attendance of witnesses, the

1 inspection of records and premises and the production of relevant  
2 books and papers for the investigation of matters that may come  
3 before them. The presiding officer of the Board shall have the  
4 authority to compel the giving of testimony as is conferred on  
5 courts of justice.

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

10 E. The Board may enact rules and regulations pursuant to the  
11 Administrative Procedures Act setting out additional acts of  
12 unprofessional conduct; which acts shall be grounds for refusal to  
13 issue or reinstate, or for action to condition, suspend or revoke a  
14 license.

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

17 Section 1-731. A. No person shall perform or induce an  
18 abortion upon a pregnant woman ~~unless that person is a physician~~  
19 ~~licensed to practice medicine in the State of Oklahoma.~~ Any person  
20 violating this section shall be guilty of a felony punishable by  
21 imprisonment for not less than one (1) year nor more than three (3)  
22 years in the ~~State Penitentiary~~ custody of the Department of  
23 Corrections.

1       B. Any physician participating in the performance of an  
2 abortion shall be prohibited from obtaining or renewing a license to  
3 practice medicine in this state. The State Board of Medical  
4 Licensure and Supervision shall revoke the license of an allopathic  
5 physician performing an abortion in this state. The State Board of  
6 Osteopathic Examiners shall revoke the license of an osteopathic  
7 physician performing an abortion in this state. For the purposes of  
8 this section, "abortion" shall have the same meaning provided by  
9 Section 1-730 of this title, except that an abortion necessary to  
10 preserve the life of the mother shall not be grounds for denial or  
11 revocation of a medical license. No such condition may be  
12 determined to exist if it is based on a claim or diagnosis that the  
13 woman may engage in conduct which she intends to result in her  
14 death.

15       C. No person shall perform or induce an abortion upon a  
16 pregnant woman subsequent to the end of the first trimester of her  
17 pregnancy, unless such abortion is performed or induced in a general  
18 hospital.

19       D. The State Board of Medical Licensure and Supervision, State  
20 Board of Osteopathic Examiners, and State Board of Health shall  
21 promulgate rules to implement the provisions of this act.

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

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24       57-2-2883           DC           1/16/2020 5:38:33 PM