

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1786

By: Dahm

AS INTRODUCED

An Act relating to abortion; amending 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), which relates to unprofessional conduct of medical doctor; amending 59 O.S. 2011, Section 637, as amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Section 637), which relates to unprofessional conduct of doctor of osteopathy; broadening certain definitions to include certain acts; amending 63 O.S. 2011, Section 1-731, which relates to abortion; 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 exceptions; directing promulgation of rules; 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 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
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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 infirmary 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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