

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1859

By: Scott

AS INTRODUCED

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; prohibiting abortion under certain circumstances; broadening provisions to include fetal or embryonic brain waves; providing 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; 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:

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

4 1. Procuring, aiding or abetting a criminal operation;

5 2. The obtaining of any fee or offering to accept any fee,
6 present or other form of remuneration whatsoever, on the assurance
7 or promise that a manifestly incurable disease can or will be cured;

8 3. Willfully betraying a professional secret to the detriment
9 of the patient;

10 4. Habitual intemperance or the habitual use of habit-forming
11 drugs;

12 5. Conviction of a felony or of any offense involving moral
13 turpitude;

14 6. All advertising of medical business in which statements are
15 made which are grossly untrue or improbable and calculated to
16 mislead the public;

17 7. Conviction or confession of a crime involving violation of:

- 18 a. the antinarcotic or prohibition laws and regulations
19 of the federal government,
20 b. the laws of this state, or
21 c. State Board of Health rules;

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

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

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

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

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

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

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

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

- 20 16. a. Prescribing, dispensing or administering of controlled
21 substances or narcotic drugs in excess of the amount
22 considered good medical practice,
23 b. prescribing, dispensing or administering controlled
24 substances or narcotic drugs without medical need in
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1 accordance with pertinent licensing board standards,
2 or

3 c. prescribing, dispensing or administering opioid drugs
4 in excess of the maximum limits authorized in Section
5 2-309I of Title 63 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

19 a. obtaining or attempting to obtain any fee, charge,
20 tuition or other compensation by fraud, deception or
21 misrepresentation; willfully and continually
22 overcharging or overtreating patients; or charging for
23 visits to the physician's office which did not occur
24 or for services which were not rendered,

- 1 b. using intimidation, coercion or deception to obtain or
2 retain a patient or discourage the use of a second
3 opinion or consultation,
4 c. willfully performing inappropriate or unnecessary
5 treatment, diagnostic tests or osteopathic medical or
6 surgical services,
7 d. delegating professional responsibilities to a person
8 who is not qualified by training, skill, competency,
9 age, experience or licensure to perform them, noting
10 that delegation may only occur within an appropriate
11 doctor-patient relationship, wherein a proper patient
12 record is maintained including, but not limited to, at
13 the minimum, a current history and physical,
14 e. misrepresenting that any disease, ailment, or
15 infirmity can be cured by a method, procedure,
16 treatment, medicine or device,
17 f. acting in a manner which results in final disciplinary
18 action by any professional society or association or
19 hospital or medical staff of such hospital in this or
20 any other state, whether agreed to voluntarily or not,
21 if the action was in any way related to professional
22 conduct, professional competence, malpractice or any
23 other violation of the Oklahoma Osteopathic Medicine
24 Act,

- 1 g. signing a blank prescription form; or dispensing,
2 prescribing, administering or otherwise distributing
3 any drug, controlled substance or other treatment
4 without sufficient examination or the establishment of
5 a physician-patient relationship, or for other than
6 medically accepted therapeutic or experimental or
7 investigational purpose duly authorized by a state or
8 federal agency, or not in good faith to relieve pain
9 and suffering, or not to treat an ailment, physical
10 infirmity or disease, or violating any state or
11 federal law on controlled dangerous substances
12 including, but not limited to, prescribing, dispensing
13 or administering opioid drugs in excess of the maximum
14 limits authorized in Section 2-309I of Title 63 of the
15 Oklahoma Statutes,
- 16 h. engaging in any sexual activity within a physician-
17 patient relationship,
- 18 i. terminating the care of a patient without adequate
19 notice or without making other arrangements for the
20 continued care of the patient,
- 21 j. failing to furnish a copy of a patient's medical
22 records upon a proper request from the patient or
23 legal agent of the patient or another physician; or
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1 failing to comply with any other law relating to
2 medical records,

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

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

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

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

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

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

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

1 to, the denial of licensure, surrender of the license, permit or
2 authority, allowing the license, permit or authority to expire or
3 lapse, or discontinuing or limiting the practice of osteopathic
4 medicine pending disposition of a complaint or completion of an
5 investigation;

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

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

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

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

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

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

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

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

1 C. 1. No physician shall perform an abortion if the physician
2 determines the embryonic or fetal heartbeat is audible, or if fetal
3 brain waves are detected.

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

6 ~~1.—The~~ a. the provider or agent has attempted, consistent
7 with standard medical practice, to make the embryonic or fetal
8 heartbeat of the unborn child audible for the pregnant woman to hear
9 using a Doppler fetal heart rate monitor~~†~~1

10 ~~2.—That~~ b. that attempt does not result in the heartbeat
11 being made audible~~†~~1 and

12 ~~3.—The~~ c. the provider has offered to attempt to make the
13 heartbeat audible at a subsequent date.

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

16 a. the provider or agent has attempted, consistent with
17 standard medical practice, to detect embryonic or
18 fetal brain waves of the unborn child using
19 electrocephalography,

20 b. that attempt does not result in the detection of brain
21 waves, and

22 c. the provider has offered to attempt to detect brain
23 waves at a subsequent date.

1 4. A physician found to be in violation of this section shall
2 be prohibited from obtaining or renewing a license to practice
3 medicine in this state. The State Board of Medical Licensure and
4 Supervision shall revoke the license of a medical doctor who is
5 found to have violated the provision of this section. The State
6 Board of Osteopathic Examiners shall revoke the license of a doctor
7 of osteopathy found to have violated the provisions of this section.

8 ~~C.~~ D. Nothing in this section shall be construed to prevent the
9 pregnant woman from not listening to the sounds detected by the
10 Doppler fetal heart rate monitor or not viewing the brain waves
11 detected by the electrocephalography pursuant to the requirements of
12 ~~subsection B~~ of this section.

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

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