

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 867

By: Dahm

AS INTRODUCED

An Act relating to abortion; amending 59 O.S. 2011, Section 509, as amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018, Section 509), which relates to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act; modifying definition; updating statutory reference; amending 59 O.S. 2011, Section 637, which relates to the Oklahoma Osteopathic Medicine Act; adding certain grounds for disciplinary action; updating statutory language; amending 63 O.S. 2011, Section 1-731, which relates to abortions; deleting certain exception; 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; 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 amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018, 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

23 c. prescribing, dispensing or administering opioid drugs
24 in excess of the maximum dosage authorized under
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Section ~~5 of this act~~ 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

21. Performance of an abortion as defined by Section 1-730 of Title 63 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, is amended to read as follows:

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

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

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

- 16 a. obtaining or attempting to obtain any fee, charge,
17 tuition or other compensation by fraud, deception or
18 misrepresentation; willfully and continually
19 overcharging or overtreating patients; or charging for
20 visits to the physician's office which did not occur
21 or for services which were not rendered,
- 22 b. using intimidation, coercion or deception to obtain or
23 retain a patient or discourage the use of a second
24 opinion or consultation,

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

- without sufficient examination or the establishment of a physician/patient relationship, or for other than medically accepted therapeutic or experimental or investigational purpose duly authorized by a state or federal agency, or not in good faith to relieve pain and suffering, or not to treat an ailment, physical infirmity or disease, or violating any state or federal law on controlled dangerous substances,
- h. engaging in any sexual activity within a physician/patient relationship,
 - i. terminating the care of a patient without adequate notice or without making other arrangements for the continued care of the patient,
 - j. failing to furnish a copy of a patient's medical records upon a proper request from the patient or legal agent of the patient or another physician; or failing to comply with any other law relating to medical records,
 - k. failing to comply with any subpoena issued by the Board,
 - l. violating a probation agreement or order with this Board or any other agency, and

1 m. failing to keep complete and accurate records of
2 purchase and disposal of controlled drugs or narcotic
3 drugs;

4 3. Has engaged in gross negligence, gross malpractice or gross
5 incompetence;

6 4. Has engaged in repeated acts of negligence, malpractice or
7 incompetence;

8 5. Has been finally adjudicated and found guilty, or entered a
9 plea of guilty or nolo contendere in a criminal prosecution, for any
10 offense reasonably related to the qualifications, functions or
11 duties of an osteopathic physician, or for any offense involving
12 moral turpitude, whether or not sentence is imposed, and regardless
13 of the pendency of an appeal;

14 6. Has had the authority to engage in the activities regulated
15 by the Board revoked, suspended, restricted, modified or limited, or
16 has been reprimanded, warned or censured, probated or otherwise
17 disciplined by any other state or federal agency whether or not
18 voluntarily agreed to by the physician including, but not limited
19 to, the denial of licensure, surrender of the license, permit or
20 authority, allowing the license, permit or authority to expire or
21 lapse, or discontinuing or limiting the practice of osteopathic
22 medicine pending disposition of a complaint or completion of an
23 investigation;

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

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

6 9. Has been guilty of advertising by means of knowingly false
7 or deceptive statements;

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

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

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

15 13. Has been guilty of personal offensive behavior, which would
16 include, but not be limited to obscenity, lewdness, molestation and
17 other acts of moral turpitude; and

18 14. Has performed an abortion as defined by Section 1-730 of
19 Title 63 of the Oklahoma Statutes, except that an abortion necessary
20 to preserve the life of the mother shall not be grounds for denial
21 or revocation of a medical license. No such condition may be
22 determined to exist if it is based on a claim or diagnosis that the
23 woman may engage in conduct which she intends to result in her
24 death; and

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

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

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

20 D. Any osteopathic physician in the State of Oklahoma whose
21 license to practice osteopathic medicine is revoked or suspended
22 under the previous paragraphs of this section shall have the right
23 to seek judicial review of a ruling of the Board pursuant to the
24 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 63 O.S. 2011, Section 1-731, is
7 amended to read as follows:

8 Section 1-731. A. No person shall perform or induce an
9 abortion upon a pregnant woman ~~unless that person is a physician~~
10 ~~licensed to practice medicine in the State of Oklahoma.~~ Any person
11 violating this section shall be guilty of a felony punishable by
12 imprisonment for not less than one (1) year nor more than three (3)
13 years in the State Penitentiary.

14 B. Any physician participating in the performance of an
15 abortion shall be prohibited from obtaining or renewing a license to
16 practice medicine in this state. The State Board of Medical
17 Licensure and Supervision shall revoke the license of an allopathic
18 physician performing an abortion in this state. The State Board of
19 Osteopathic Examiners shall revoke the license of an osteopathic
20 physician performing an abortion in this state. For the purposes of
21 this section, "abortion" shall have the same meaning provided by
22 Section 1-730 of this title, except that an abortion necessary to
23 preserve the life of the mother shall not be grounds for denial or
24 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 C. No person shall perform or induce an abortion upon a
5 pregnant woman subsequent to the end of the first trimester of her
6 pregnancy, unless such abortion is performed or induced in a general
7 hospital.

8 D. The State Board of Medical Licensure and Supervision, State
9 Board of Osteopathic Examiners, and State Commissioner of Health
10 shall promulgate rules to implement the provisions of this act.

11 SECTION 4. This act shall become effective November 1, 2019.
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