

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 723

By: Dahm

AS INTRODUCED

An Act relating to abortion; amending 59 O.S. 2011, Sections 509 and 637, as last amended by Sections 36 and 42, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020, Sections 509 and 637), which relate to unprofessional conduct of physicians; broadening certain definitions to include certain acts; amending Section 4, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2020, 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; amending Section 6, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2020, Section 1-745.16), which relates to penalties; 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 for severability; updating statutory reference; providing for codification; 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 36, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020, 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 or confession of, or plea of guilty, nolo
13 contendere, no contest or Alford plea to a felony or any offense
14 involving moral turpitude;

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

18 7. Conviction or confession of, or plea of guilty, nolo
19 contendere, no contest or Alford plea to a crime involving violation
20 of:

21 a. the antinarcotic or prohibition laws and regulations
22 of the federal government,

23 b. the laws of this state,

24 c. State Board of Health rules, or
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1 d. a determination by a judge or jury;

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

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

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

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

16 12. Prescribing or administering a drug or treatment without
17 sufficient examination and the establishment of a valid physician-
18 patient relationship and not prescribing in a safe, medically
19 accepted manner;

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

1 14. Aiding or abetting, directly or indirectly, the practice of
2 medicine by any person not duly authorized under the laws of this
3 state;

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

3 16. a. Prescribing, dispensing or administering of controlled
4 substances or narcotic drugs in excess of the amount
5 considered good medical practice,

6 b. prescribing, dispensing or administering controlled
7 substances or narcotic drugs without medical need in
8 accordance with pertinent licensing board standards,
9 or

10 c. prescribing, dispensing or administering opioid drugs
11 in excess of the maximum limits authorized in Section
12 2-309I of Title 63 of the Oklahoma Statutes;

13 17. Engaging in physical conduct with a patient which is sexual
14 in nature, or in any verbal behavior which is seductive or sexually
15 demeaning to a patient;

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

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

23 20. Failure to provide a proper and safe medical facility
24 setting and qualified assistive personnel for a recognized medical
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1 act, including but not limited to an initial in-person patient
2 examination, office surgery, diagnostic service or any other medical
3 procedure or treatment. Adequate medical records to support
4 diagnosis, procedure, treatment or prescribed medications must be
5 produced and maintained; or

6 21. Violation of the provisions of the Heartbeat Informed
7 Consent Act.

8 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as last
9 amended by Section 42, Chapter 161, O.S.L. 2020 (59 O.S. Supp. 2020,
10 Section 637), is amended to read as follows:

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

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

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

- 3 a. obtaining or attempting to obtain any fee, charge,
4 tuition or other compensation by fraud, deception or
5 misrepresentation; willfully and continually
6 overcharging or overtreating patients; or charging for
7 visits to the physician's office which did not occur
8 or for services which were not rendered,
- 9 b. using intimidation, coercion or deception to obtain or
10 retain a patient or discourage the use of a second
11 opinion or consultation,
- 12 c. willfully performing inappropriate or unnecessary
13 treatment, diagnostic tests or osteopathic medical or
14 surgical services,
- 15 d. delegating professional responsibilities to a person
16 who is not qualified by training, skill, competency,
17 age, experience or licensure to perform them, noting
18 that delegation may only occur within an appropriate
19 doctor-patient relationship, wherein a proper patient
20 record is maintained including, but not limited to, at
21 the minimum, a current history and physical,
- 22 e. misrepresenting that any disease, ailment, or
23 infirmity can be cured by a method, procedure,
24 treatment, medicine or device,

- 1 f. acting in a manner which results in final disciplinary
2 action by any professional society or association or
3 hospital or medical staff of such hospital in this or
4 any other state, whether agreed to voluntarily or not,
5 if the action was in any way related to professional
6 conduct, professional competence, malpractice or any
7 other violation of the Oklahoma Osteopathic Medicine
8 Act,
- 9 g. signing a blank prescription form; or dispensing,
10 prescribing, administering or otherwise distributing
11 any drug, controlled substance or other treatment
12 without sufficient examination or the establishment of
13 a physician-patient relationship, or for other than
14 medically accepted therapeutic or experimental or
15 investigational purpose duly authorized by a state or
16 federal agency, or not in good faith to relieve pain
17 and suffering, or not to treat an ailment, physical
18 infirmity or disease, or violating any state or
19 federal law on controlled dangerous substances
20 including, but not limited to, prescribing, dispensing
21 or administering opioid drugs in excess of the maximum
22 limits authorized in Section 2-309I of Title 63 of the
23 Oklahoma Statutes,
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- 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
- m. failing to keep complete and accurate records of purchase and disposal of controlled drugs or narcotic drugs;

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

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

5. Has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution, for any offense reasonably related to the qualifications, functions or

1 duties of an osteopathic physician, whether or not sentence is
2 imposed, and regardless of the pendency of an appeal;

3 6. Has had the authority to engage in the activities regulated
4 by the Board revoked, suspended, restricted, modified or limited, or
5 has been reprimanded, warned or censured, probated or otherwise
6 disciplined by any other state or federal agency whether or not
7 voluntarily agreed to by the physician including, but not limited
8 to, the denial of licensure, surrender of the license, permit or
9 authority, allowing the license, permit or authority to expire or
10 lapse, or discontinuing or limiting the practice of osteopathic
11 medicine pending disposition of a complaint or completion of an
12 investigation;

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

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

18 9. Has been guilty of advertising by means of knowingly false
19 or deceptive statements;

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

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

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

4 13. Has been guilty of personal offensive behavior, which would
5 include, but not be limited to obscenity, lewdness and molestation;
6 ~~and~~

7 14. Has been adjudicated to be insane, or incompetent, or
8 admitted to an institution for the treatment of psychiatric
9 disorders; and

10 15. Has violated the provisions of the Heartbeat Informed
11 Consent Act.

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

20 C. The State Board of Osteopathic Examiners shall have the
21 power to order or subpoena the attendance of witnesses, the
22 inspection of records and premises and the production of relevant
23 books and papers for the investigation of matters that may come
24 before them. The presiding officer of the Board shall have the

1 authority to compel the giving of testimony as is conferred on
2 courts of justice.

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

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

12 SECTION 3. AMENDATORY Section 4, Chapter 159, O.S.L.
13 2012 (63 O.S. Supp. 2020, Section 1-745.14), is amended to read as
14 follows:

15 Section 1-745.14. A. Any abortion provider who knowingly
16 performs or induces any abortion shall comply with the requirements
17 of the Heartbeat Informed Consent Act.

18 B. Prior to a woman giving informed consent to having any part
19 of an abortion performed or induced, if the pregnancy is at least
20 ~~eight (8)~~ six (6) weeks after fertilization, the abortion provider
21 who is to perform or induce the abortion or an agent of the abortion
22 provider shall ~~tell the woman that it may be possible to make~~
23 determine if the embryonic or fetal heartbeat of the unborn child is
24 ~~audible for the pregnant woman to hear and ask the woman if she~~

1 ~~would like to hear the heartbeat. If the woman would like to hear~~
2 ~~the heartbeat, the abortion provider shall, using a Doppler fetal~~
3 ~~heart rate monitor, make the embryonic or fetal heartbeat of the~~
4 ~~unborn child audible for the pregnant woman to hear. No physician~~
5 ~~shall perform an abortion if the physician determines the embryonic~~
6 ~~or fetal heartbeat is audible.~~ An abortion provider, or an agent of
7 the abortion provider shall not be in violation of the requirements
8 of this subsection if:

9 1. The provider or agent has attempted, consistent with
10 standard medical practice, to make the embryonic or fetal heartbeat
11 of the unborn child audible for the pregnant woman to hear using a
12 Doppler fetal heart rate monitor;

13 2. That attempt does not result in the heartbeat being made
14 audible; and

15 3. The provider has offered to attempt to make the heartbeat
16 audible at a subsequent date.

17 C. Nothing in this section shall be construed to prevent the
18 pregnant woman from not listening to the sounds detected by the
19 Doppler fetal heart rate monitor pursuant to the requirements of
20 subsection B of this section.

21 SECTION 4. AMENDATORY Section 6, Chapter 159, O.S.L.
22 2012 (63 O.S. Supp. 2020, Section 1-745.16), is amended to read as
23 follows:
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1 Section 1-745.16. A. Any person who intentionally or
2 recklessly performs or induces an abortion in violation of the
3 Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No
4 penalty shall be assessed against the woman upon whom the abortion
5 is performed or induced or attempted to be performed or induced.

6 B. Any woman upon whom an abortion has been performed or
7 induced in violation of ~~this act~~ the Heartbeat Informed consent Act,
8 or the father of the unborn child who was the subject of such an
9 abortion, may maintain an action against the person who performed or
10 induced the abortion in intentional or reckless violation of this
11 act for actual and punitive damages. Any woman upon whom an
12 abortion has been attempted in violation of this act may maintain an
13 action against the person who attempted to perform or induce the
14 abortion in an intentional or reckless violation of this act for
15 actual and punitive damages.

16 C. A cause of action for injunctive relief against any person
17 who has intentionally or recklessly violated ~~this act~~ the Heartbeat
18 Informed Consent Act may be maintained by the woman upon whom an
19 abortion was performed or induced in violation of this act; by any
20 person who is the spouse, parent, sibling, or guardian of, or a
21 current or former licensed health care provider of, the woman upon
22 whom an abortion has been performed or induced in violation of this
23 act; by a district attorney with appropriate jurisdiction; or by the
24 Attorney General. The injunction shall prevent the abortion

1 provider from performing or inducing further abortions in violation
2 of this act in the state.

3 D. If judgment is rendered in favor of the plaintiff in an
4 action described in this section, the court shall also render
5 judgment for a reasonable attorney fee in favor of the plaintiff
6 against the defendant.

7 E. If judgment is rendered in favor of the defendant and the
8 court finds that the plaintiff's suit was frivolous and brought in
9 bad faith, the court shall also render judgment for a reasonable
10 attorney fee in favor of the defendant against the plaintiff.

11 F. No damages or attorney fee may be assessed against the woman
12 upon whom an abortion was performed or attempted to be performed or
13 induced except in accordance with subsection E of this section.

14 G. In addition to all other penalties prescribed by this
15 section, a physician who intentionally or recklessly performs or
16 induces an abortion in violation of the Heartbeat Informed Consent
17 Act shall be prohibited from obtaining or renewing a license to
18 practice medicine in this state. The State Board of Medical
19 Licensure and Supervision shall revoke the license of a medical
20 doctor who intentionally or recklessly performs or induces an
21 abortion in violation of the Heartbeat Informed Consent Act. The
22 State Board of Osteopathic Examiners shall revoke the license of a
23 doctor of osteopathy who intentionally or recklessly performs or
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1 induces an abortion in violation of the Heartbeat Informed Consent
2 Act.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-745.20 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 If some or all of the provisions of Section 1, 2, 3 or 4 of this
7 act are ever temporarily or permanently restrained or enjoined by
8 court order, the remaining provisions of such section shall be
9 enforced as though the restrained or enjoined provisions had not
10 been adopted; provided, however, if such temporary or permanent
11 restraining order or injunction is stayed or dissolved, or otherwise
12 ceases to have effect, such provisions shall have full force and
13 effect.

14 SECTION 6. This act shall become effective November 1, 2021.

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