

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Engrossed House Bill No. 1182, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Daniels

Daniels-DC-FS-Req#4108
5/13/2020 2:35 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

FLOOR SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1182

By: Olsen, Moore, West (Kevin),
Gann, Humphrey, Smith,
Boles, Hardin (David),
Roberts (Sean), Roberts
(Dustin), Davis, Russ,
Steagall, Stark, Taylor,
Crosswhite Hader, Townley,
McCall, McDugle, Miller,
Hilbert, Sims, Lepak,
Lawson, Vancuren, Sanders,
Hill, Randleman, Dills,
Hasenbeck, Conley and Grego
of the House

and

Daniels, Bullard, Scott,
Dahm and Allen of the
Senate

FLOOR SUBSTITUTE

An Act relating to physician licensure; amending 59
O.S. 2011, Sections 509, as last amended by Section
Chapter 492, O.S.L. 2019 and 637, as amended by
Section 31, Chapter 363, O.S.L. 2019 (59 O.S. Supp.
2019, Sections 509 and 637), which relate to
unprofessional conduct; broadening certain
definitions to include certain acts; updating
statutory term; amending 63 O.S. 2011, Section 1-731,
which relates to abortion; prohibiting performance of
abortion by a physician; providing penalties;
providing exceptions; defining term; directing
promulgation of rules; directing Office of the
Attorney General to calculate certain costs;
requiring reporting of certain records; providing for
certain enforcement under certain circumstances;

1 updating statutory language; and providing for
2 codification.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last
6 amended by Section 8, Chapter 492, O.S.L. 2019 (59 O.S. Supp. 2019,
7 Section 509), is amended to read as follows:

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

- 11 1. Procuring, aiding or abetting a criminal operation;
- 12 2. The obtaining of any fee or offering to accept any fee,
13 present or other form of remuneration whatsoever, on the assurance
14 or promise that a manifestly incurable disease can or will be cured;
- 15 3. Willfully betraying a professional secret to the detriment
16 of the patient;
- 17 4. Habitual intemperance or the habitual use of habit-forming
18 drugs;
- 19 5. Conviction or confession of, or plea of guilty, nolo
20 contendere, no contest or Alford plea to a felony or any offense
21 involving moral turpitude;
- 22 6. All advertising of medical business in which statements are
23 made which are grossly untrue or improbable and calculated to
24 mislead the public;

1 7. Conviction or confession of, or plea of guilty, nolo
2 contendere, no contest or Alford plea to a crime involving violation
3 of:

- 4 a. the antinarcotic or prohibition laws and regulations
- 5 of the federal government,
- 6 b. the laws of this state,
- 7 c. State ~~Board~~ Commissioner of Health rules, or
- 8 d. a determination by a judge or jury;

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

11 9. The commission of any act which is a violation of the
12 criminal laws of any state when such act is connected with the
13 physician's practice of medicine. A complaint, indictment or
14 confession of a criminal violation shall not be necessary for the
15 enforcement of this provision. Proof of the commission of the act
16 while in the practice of medicine or under the guise of the practice
17 of medicine shall be unprofessional conduct;

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

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

23 12. Prescribing or administering a drug or treatment without
24 sufficient examination and the establishment of a valid physician-

1 patient relationship and not prescribing in a safe, medically
2 accepted manner;

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

7 14. Aiding or abetting, directly or indirectly, the practice of
8 medicine by any person not duly authorized under the laws of this
9 state;

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

1 other evidence to show why the physician should not be required to
2 submit to the examination. After a complete hearing, the Board
3 shall issue an order either requiring the physician to submit to the
4 examination or withdrawing the request for examination. The medical
5 license of a physician ordered to submit for examination may be
6 suspended until the results of the examination are received and
7 reviewed by the Board;

8 16. a. Prescribing, dispensing or administering of controlled
9 substances or narcotic drugs in excess of the amount
10 considered good medical practice,

11 b. prescribing, dispensing or administering controlled
12 substances or narcotic drugs without medical need in
13 accordance with pertinent licensing board standards,
14 or

15 c. prescribing, dispensing or administering opioid drugs
16 in excess of the maximum dosage authorized under
17 Section 2-309I of Title 63 of the Oklahoma Statutes;

18 17. Engaging in physical conduct with a patient which is sexual
19 in nature, or in any verbal behavior which is seductive or sexually
20 demeaning to a patient;

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

24

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

5 20. Performance of an abortion as defined by Section 1-730 of
6 Title 63 of the Oklahoma Statutes and shall be grounds for
7 suspension of a medical license. This provision shall not apply to
8 an abortion necessary to prevent the death of the mother, or to
9 prevent substantial or irreversible physical impairment of the
10 mother that substantially increases the risk of death. The
11 performance of an abortion on the basis of the mental or emotional
12 health of the mother shall be grounds for suspension of a medical
13 license. No such condition may be determined to exist if it is
14 based on a claim or diagnosis that the woman may engage in conduct
15 which she intends to result in her death; or

16 21. 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.

1 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as
2 amended by Section 31, Chapter 363, 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 h. engaging in any sexual activity within a
13 physician/patient relationship,
- 14 i. terminating the care of a patient without adequate
15 notice or without making other arrangements for the
16 continued care of the patient,
- 17 j. failing to furnish a copy of a patient's medical
18 records upon a proper request from the patient or
19 legal agent of the patient or another physician; or
20 failing to comply with any other law relating to
21 medical records,
- 22 k. failing to comply with any subpoena issued by the
23 Board,
- 24

1 1. violating a probation agreement or order with this
2 Board or any other agency, and

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

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

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

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

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

18 14. Has performed an abortion as defined by Section 1-730 of
19 Title 63 of the Oklahoma Statutes which shall be grounds for
20 suspension of a medical license. This provision shall not apply to
21 an abortion necessary to prevent the death of the mother, or to
22 prevent substantial or irreversible physical impairment of the
23 mother that substantially increases the risk of death. The
24 performance of an abortion on the basis of the mental or emotional

1 health of the mother shall be grounds for suspension of a medical
2 license. No such condition may be determined to exist if it is
3 based on a claim or diagnosis that the woman may engage in conduct
4 which she intends to result in her death; and

5 15. Has been adjudicated to be insane, or incompetent, or
6 admitted to an institution for the treatment of psychiatric
7 disorders.

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

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

24

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

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

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

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

20 B. Any physician licensed to practice medicine in the State of
21 Oklahoma performing an abortion, except as provided in Section 1-732
22 of Title 63 of the Oklahoma Statutes, shall have his or her license
23 to practice medicine in this state suspended for a minimum of one
24 (1) year and shall be fined a minimum of Five Hundred Dollars

1 (\$500.00). For the purposes of this section, "abortion" shall have
2 the same meaning provided by Section 1-730 of this title and shall
3 be grounds for suspension of a medical license. This provision
4 shall not apply to an abortion necessary to prevent the death of the
5 mother, or to prevent substantial or irreversible physical
6 impairment of the mother that substantially increases the risk of
7 death. The performance of an abortion on the basis of the mental or
8 emotional health of the mother shall be grounds for suspension of a
9 medical license. No such condition may be determined to exist if it
10 is based on a claim or diagnosis that the woman may engage in
11 conduct which she intends to result in her death.

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

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

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-731.3 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 In the event that any provision of Sections 509 and 637 of Title
23 59 of the Oklahoma Statutes and Section 1-731 of Title 63 of the
24 Oklahoma Statutes are challenged in court in any action alleging

1 violation of either the Constitution of the United States of America
2 or the State of Oklahoma, the Office of the Attorney General shall
3 determine the amount of state or local funds expended to defend such
4 action. Such determination shall include the number of hours of
5 time spent by any public employee in such defense multiplied by the
6 rate of compensation paid to such employee, as well as the costs of
7 any outside counsel paid for such purpose, and shall include both
8 direct and indirect costs. The Office of the Attorney General shall
9 report such amounts for each calendar quarter to all members of the
10 Legislature.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-731.4 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 If some or all of the provisions of Section 1, 2 or 3 of this
15 act are ever temporarily or permanently restrained or enjoined by
16 court order, the remaining provisions of such section shall be
17 enforced as though the restrained or enjoined provisions had not
18 been adopted; provided, however, if such temporary or permanent
19 restraining order or injunction is stayed or dissolved, or otherwise
20 ceases to have effect, such provisions shall have full force and
21 effect.

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