

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 1552

By: Dahm, Sharp, Allen and  
Brecheen of the Senate

and

Brumbaugh, Strohm, Moore,  
Bennett, Kern, Vaughan,  
Faight, Johnson, Cooksey  
and Roberts (Sean) of the  
House

11  
12                                   COMMITTEE SUBSTITUTE

13                   An Act relating to physician licensure; amending 59  
14 O.S. 2011, Sections 509 and 637, which relate to  
15 unprofessional conduct; broadening certain  
16 definitions to include certain acts; amending 63 O.S.  
17 2011, Section 1-731, which relates to abortion;  
18 prohibiting issuance or renewal of physician license  
19 for certain acts; requiring State Board of Medical  
20 Licensure and Supervision and State Board of  
21 Osteopathic Examiners to revoke licenses for certain  
22 acts; providing certain exceptions; directing  
23 promulgation of rules; directing Office of the  
24 Attorney General to calculate certain costs;  
requiring reporting of certain records; providing for  
noncodification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, is  
2 amended to read as follows:

3 Section 509. The words "unprofessional conduct" as used in  
4 Sections 481 through 514 of this title are hereby declared to  
5 include, but shall not be limited to, the following:

- 6 1. Procuring, aiding or abetting a criminal operation;
- 7 2. The obtaining of any fee or offering to accept any fee,  
8 present or other form of remuneration whatsoever, on the assurance  
9 or promise that a manifestly incurable disease can or will be cured;
- 10 3. Willfully betraying a professional secret to the detriment  
11 of the patient;
- 12 4. Habitual intemperance or the habitual use of habit-forming  
13 drugs;
- 14 5. Conviction of a felony or of any offense involving moral  
15 turpitude;
- 16 6. All advertising of medical business in which statements are  
17 made which are grossly untrue or improbable and calculated to  
18 mislead the public;
- 19 7. Conviction or confession of a crime involving violation of:
  - 20 a. the antinarcotic or prohibition laws and regulations  
21 of the federal government,
  - 22 b. the laws of this state, or
  - 23 c. State Board of Health rules;

24

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

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

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

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

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

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

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

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

22        16. Prescribing, dispensing or administering of controlled  
23 substances or narcotic drugs in excess of the amount considered good  
24 medical practice, or prescribing, dispensing or administering

1 controlled substances or narcotic drugs without medical need in  
2 accordance with published standards;

3 17. Engaging in physical conduct with a patient which is sexual  
4 in nature, or in any verbal behavior which is seductive or sexually  
5 demeaning to a patient;

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

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

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

20 21. Failure to provide a proper and safe medical facility  
21 setting and qualified assistive personnel for a recognized medical  
22 act, including but not limited to an initial in-person patient  
23 examination, office surgery, diagnostic service or any other medical  
24 procedure or treatment. Adequate medical records to support

1 diagnosis, procedure, treatment or prescribed medications must be  
2 produced and maintained.

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

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

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

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

20 a. obtaining or attempting to obtain any fee, charge,  
21 tuition or other compensation by fraud, deception or  
22 misrepresentation; willfully and continually  
23 overcharging or overtreating patients; or charging for  
24

1 visits to the physician's office which did not occur  
2 or for services which were not rendered,

3 b. using intimidation, coercion or deception to obtain or  
4 retain a patient or discourage the use of a second  
5 opinion or consultation,

6 c. willfully performing inappropriate or unnecessary  
7 treatment, diagnostic tests or osteopathic medical or  
8 surgical services,

9 d. delegating professional responsibilities to a person  
10 who is not qualified by training, skill, competency,  
11 age, experience or licensure to perform them, noting  
12 that delegation may only occur within an appropriate  
13 doctor/patient relationship, wherein a proper patient  
14 record is maintained including, but not limited to, at  
15 the minimum, a current history and physical,

16 e. misrepresenting that any disease, ailment, or  
17 infirmity can be cured by a method, procedure,  
18 treatment, medicine or device,

19 f. acting in a manner which results in final disciplinary  
20 action by any professional society or association or  
21 hospital or medical staff of such hospital in this or  
22 any other state, whether agreed to voluntarily or not,  
23 if the action was in any way related to professional  
24 conduct, professional competence, malpractice or any

1 other violation of the Oklahoma Osteopathic Medicine  
2 Act,

- 3 g. signing a blank prescription form; or dispensing,  
4 prescribing, administering or otherwise distributing  
5 any drug, controlled substance or other treatment  
6 without sufficient examination or the establishment of  
7 a physician/patient relationship, or for other than  
8 medically accepted therapeutic or experimental or  
9 investigational purpose duly authorized by a state or  
10 federal agency, or not in good faith to relieve pain  
11 and suffering, or not to treat an ailment, physical  
12 infirmity or disease, or violating any state or  
13 federal law on controlled dangerous substances,
- 14 h. engaging in any sexual activity within a  
15 physician/patient relationship,
- 16 i. terminating the care of a patient without adequate  
17 notice or without making other arrangements for the  
18 continued care of the patient,
- 19 j. failing to furnish a copy of a patient's medical  
20 records upon a proper request from the patient or  
21 legal agent of the patient or another physician; or  
22 failing to comply with any other law relating to  
23 medical records,
- 24



1 k. failing to comply with any subpoena issued by the  
2 Board,

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

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

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

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

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

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

1 lapse, or discontinuing or limiting the practice of osteopathic  
2 medicine pending disposition of a complaint or completion of an  
3 investigation;

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

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

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

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

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

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

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

21 14. Has performed 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; and

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

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

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

23 D. Any osteopathic physician in the State of Oklahoma whose  
24 license to practice osteopathic medicine is revoked or suspended

1 under the previous paragraphs of this section shall have the right  
2 to seek judicial review of a ruling of the Board pursuant to the  
3 Administrative Procedures Act.

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

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

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

17 B. Any physician participating in the performance of an  
18 abortion shall be prohibited from obtaining or renewing a license to  
19 practice medicine in this state. The State Board of Medical  
20 Licensure and Supervision shall revoke the license of an allopathic  
21 physician performing an abortion in this state. The State Board of  
22 Osteopathic Examiners shall revoke the license of an osteopathic  
23 physician performing an abortion in this state. For the purposes of  
24 this section, "abortion" shall have the same meaning provided by

1 Section 1-730 of this title, except that an abortion necessary to  
2 preserve the life of the mother shall not be grounds for denial or  
3 revocation of a medical license. No such condition may be  
4 determined to exist if it is based on a claim or diagnosis that the  
5 woman may engage in conduct which she intends to result in her  
6 death.

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

11 D. The State Board of Medical Licensure and Supervision, State  
12 Board of Osteopathic Examiners, and State Board of Health shall  
13 promulgate rules to implement the provisions of this act.

14 SECTION 4. NEW LAW A new section of law not to be  
15 codified in the Oklahoma Statutes reads as follows:

16 In the event that any provision of this act is challenged in  
17 court in any action alleging a violation of either the Constitution  
18 of the United States of America or the State of Oklahoma, the Office  
19 of the Attorney General shall determine the amount of state or local  
20 funds expended to defend such action. Such determination shall  
21 include the number of hours of time spent by any public employee in  
22 such defense multiplied by the rate of compensation paid to such  
23 employee, as well as the costs of any outside counsel paid for such  
24 purpose, and shall include both direct and indirect costs. The

1 Office of the Attorney General shall report such amounts for each  
2 calendar quarter to all members of the Legislature.

3 SECTION 5. This act shall become effective November 1, 2016.  
4

5 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03/30/2016 -  
6 DO PASS, As Amended and Coauthored.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24