

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2339

By: Ritze

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8 COMMITTEE SUBSTITUTE

9 An Act relating to professions and occupations;
10 amending 59 O.S. 2011, Sections 509, 512, as amended
11 by Section 3, Chapter 176, O.S.L. 2014, 513 and 518.1
12 (59 O.S. Supp. 2016, Section 512), which relate to
13 the Oklahoma Allopathic Medical and Surgical
14 Licensure and Supervision Act; modifying certain
15 definition; permitting Board to contract with
16 agencies to perform administrative services;
17 permitting Board investigators to perform certain
18 services; providing that licensees shall be deemed to
19 have given consent for Board investigators to inspect
20 certain records; permitting application for search
21 warrant; permitting Board investigators to
22 investigate records to determine if licensee is in
23 compliance with certain laws; providing that Board
24 investigators meeting certain qualifications have
jurisdiction to perform certain duties; deleting
requirement that physician's license be revoked upon
final felony conviction after exhaustion of appellate
process; deleting requirement that suspension or
revocation of license for certain conviction be based
on the merits; permitting certain program to employ
director for certain purpose and to fix salary;
permitting program to contract with certain entities;
providing for codification; and providing an
effective date.

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

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

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

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

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

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

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

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

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

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

13. The violation, or attempted violation, direct or indirect, of any of the provisions of the Oklahoma Allopathic Medical and

1 Surgical Licensure and Supervision Act, either as a principal,
2 accessory or accomplice;

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

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

1 ordered to submit for examination may be suspended until the results
2 of the examination are received and reviewed by the Board;

3 16. Prescribing, dispensing or administering of controlled
4 substances or narcotic drugs in excess of the amount considered good
5 medical practice, or prescribing, dispensing or administering
6 controlled substances or narcotic drugs without medical need in
7 accordance with published standards;

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

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

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

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

1 SECTION 2. AMENDATORY 59 O.S. 2011, Section 512, as
2 amended by Section 3, Chapter 176, O.S.L. 2014 (59 O.S. Supp. 2016,
3 Section 512), is amended to read as follows:

4 Section 512. The secretary of the State Board of Medical
5 Licensure and Supervision shall be paid an annual salary in an
6 amount fixed by the Board. The Board shall have the authority to
7 expend such funds as are necessary in carrying out the duties of the
8 Board and shall have the authority to hire all necessary personnel,
9 at salaries to be fixed by the Board, as the Board shall deem
10 necessary. The Board shall have the authority to hire attorneys to
11 represent the Board in all legal matters and to assist authorized
12 state and county officers in prosecuting or restraining violations
13 of Section 481 et seq. of this title, and to fix the salaries or per
14 diem of said attorneys.

15 The Board shall have the authority to hire one or more
16 investigators as may be necessary to carry out the provisions of
17 this act at an annual salary to be fixed by the Board. Such
18 investigators may be commissioned peace officers of this state. In
19 addition such investigators shall have the authority and duty to
20 investigate and inspect the records of all persons in order to
21 determine whether or not a disciplinary action for unprofessional
22 misconduct is warranted or whether the narcotic laws or the
23 dangerous drug laws have been complied with.

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1 The Board is specifically authorized to contract with state
2 agencies or other bodies to perform investigative services or other
3 administrative services at a rate set by the Board.

4 The Board is authorized to pay the travel expenses of Board
5 employees and members in accordance with the State Travel
6 Reimbursement Act.

7 The expenditures authorized herein shall not be a charge against
8 the state, but the same shall be paid solely from the Board's
9 depository fund.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 512.1 of Title 59, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Investigators for the State Board of Medical Licensure and
14 Supervision shall perform such services as are necessary in the
15 investigation of criminal activity or preparation of administrative
16 actions.

17 B. Any licensee subject to the provisions of the Oklahoma
18 Allopathic Medical and Surgical Licensure and Supervision Act shall
19 be deemed to have given consent to any duly authorized investigator
20 of the Board to access, enter or inspect the records, either on-site
21 or at the Board office or facilities of such licensee or applicant
22 subject to the Oklahoma Allopathic Medical and Surgical Licensure
23 and Supervision Act. Refusal to allow such access, entry or
24 inspection may constitute grounds for the denial, nonrenewal,

1 suspension or revocation of a license. Upon refusal of such access,
2 entry or inspection, pursuant to this section, the Board or a duly
3 authorized representative may make application for and obtain a
4 search warrant from the district court where the facility or records
5 are located to allow such access, entry or inspection.

6 C. Investigators shall also have the authority and duty to
7 investigate and inspect the records of all persons in order to
8 determine whether the licensee is in compliance with applicable
9 narcotics and dangerous drug laws and regulations.

10 D. Any investigator certified as a peace officer by the Council
11 on Law Enforcement Education and Training shall have statewide
12 jurisdiction to perform the duties authorized by this section. In
13 addition, the investigator shall be considered a peace officer and
14 shall have the powers now or hereafter vested by law in peace
15 officers.

16 SECTION 4. AMENDATORY 59 O.S. 2011, Section 513, is
17 amended to read as follows:

18 Section 513. A. 1. The State Board of Medical Licensure and
19 Supervision is hereby given quasi-judicial powers while sitting as a
20 Board for the purpose of revoking, suspending or imposing other
21 disciplinary actions upon the license of physicians or surgeons of
22 this state, and appeals from its decisions shall be taken to the
23 Supreme Court of this state within thirty (30) days of the date that
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1 a copy of the decision is mailed to the appellant, as shown by the
2 certificate of mailing attached to the decision.

3 2. The license of any physician or surgeon who has been
4 convicted of any felony in or without the State of Oklahoma and
5 whether in a state or federal court, may be suspended by the Board
6 upon the submission thereto of a certified copy of the judgment and
7 sentence of the trial court and the certificate of the clerk of the
8 court of the conviction.

9 3. Upon proof of a ~~final~~ felony conviction by the courts ~~and~~
10 ~~after exhaustion of the appellate process~~, the Board shall revoke
11 the physician's license. If the felony conviction is overturned on
12 appeal and no other appeals are sought, the Board shall restore the
13 license of the physician. ~~Suspension or revocation of the license~~
14 ~~of any person convicted of a felony on any other grounds than that~~
15 ~~of moral turpitude or the violation of the federal or state narcotic~~
16 ~~laws, shall be on the merits of the particular case, but the court~~
17 Court records in the trial of such case when of such a conviction
18 ~~has been had~~ shall be prima facie evidence of the conviction.

19 4. The Board shall also revoke and cancel the license of any
20 physician or surgeon who has been charged in a court of record of
21 this or other states of the United States or in the federal court
22 with the commission of a felony and who is a fugitive from justice,
23 upon the submission of a certified copy of the charge together with
24 a certificate from the clerk of the court that after the commitment

1 of the crime the physician or surgeon fled from the jurisdiction of
2 the court and is a fugitive from justice.

3 B. To the extent necessary to allow the Board the power to
4 enforce disciplinary actions imposed by the Board, in the exercise
5 of its authority, the Board may punish willful violations of its
6 orders and impose additional penalties as allowed by Section 509.1
7 of this title.

8 SECTION 5. AMENDATORY 59 O.S. 2011, Section 518.1, is
9 amended to read as follows:

10 Section 518.1 A. There is hereby established the Allied
11 Professional Peer Assistance Program to rehabilitate allied medical
12 professionals whose competency may be compromised because of the
13 abuse of drugs or alcohol, so that such allied medical professionals
14 can be treated and can return to or continue the practice of allied
15 medical practice in a manner which will benefit the public. The
16 program shall be under the supervision and control of the State
17 Board of Medical Licensure and Supervision.

18 B. The Board may appoint one or more peer assistance evaluation
19 advisory committees, hereinafter called the "allied peer assistance
20 committees". Each of these committees shall be composed of members,
21 the majority of which shall be licensed allied medical professionals
22 with expertise in chemical dependency. The allied peer assistance
23 committees shall function under the authority of the State Board of
24 Medical Licensure and Supervision in accordance with the rules of

1 the Board. The program may be one hundred percent (100%) outsourced
2 to professional groups specialized in this arena. The committee
3 members shall serve without pay, but may be reimbursed for the
4 expenses incurred in the discharge of their official duties in
5 accordance with the State Travel Reimbursement Act.

6 C. The Board may appoint and employ a qualified person or
7 persons to serve as program coordinators and shall fix such person's
8 compensation. The program may employ a director for purposes of
9 ongoing nonclerical administrative duties and shall fix the
10 director's compensation. The Board shall define the duties of the
11 program coordinators and director who shall report directly to the
12 Board.

13 D. The Board is authorized to adopt and revise rules, not
14 inconsistent with the Oklahoma Allopathic Medical and Surgical
15 Licensure and Supervision Act, as may be necessary to enable it to
16 carry into effect the provisions of this section.

17 E. A portion of licensing fees for each allied profession, not
18 to exceed Ten Dollars (\$10.00), may be used to implement and
19 maintain the Allied Professional Peer Assistance Program.

20 F. All monies paid pursuant to subsection E of this section
21 shall be deposited in an agency special account revolving fund under
22 the State Board of Medical Licensure and Supervision, and shall be
23 used for the general operating expenses of the Allied Professional
24 Peer Assistance Program, including payment of personal services.

1 G. Records and management information system of the
2 professionals enrolled in the Allied Professional Peer Assistance
3 Program and reports shall be maintained in the program office in a
4 place separate and apart from the records of the Board. The records
5 shall be made public only by subpoena and court order; provided
6 however, confidential treatment shall be cancelled upon default by
7 the professional in complying with the requirements of the program.

8 H. Any person making a report to the Board or to an allied peer
9 assistance committee regarding a professional suspected of
10 practicing allied medical practice while habitually intemperate or
11 addicted to the use of habit-forming drugs, or a professional's
12 progress or lack of progress in rehabilitation, shall be immune from
13 any civil or criminal action resulting from such reports, provided
14 such reports are made in good faith.

15 I. A professional's participation in the Allied Professional
16 Peer Assistance Program in no way precludes additional proceedings
17 by the Board for acts or omissions of acts not specifically related
18 to the circumstances resulting in the professional's entry into the
19 program. However, in the event the professional defaults from the
20 program, the Board may discipline the professional for those acts
21 which led to the professional entering the program.

22 J. The Executive Director of the Board shall suspend the
23 license immediately upon notification that the licensee has
24 defaulted from the Allied Professional Peer Assistance Program, and

1 shall assign a hearing date for the matter to be presented to the
2 Board.

3 K. All treatment information, whether or not recorded, and all
4 communications between a professional and therapist are both
5 privileged and confidential. In addition, the identity of all
6 persons who have received or are receiving treatment services shall
7 be considered confidential and privileged.

8 L. As used in this section, unless the context otherwise
9 requires:

10 1. "Board" means the State Board of Medical Licensure and
11 Supervision; and

12 2. "Allied peer assistance committee" means the peer assistance
13 evaluation advisory committee created in this section, which is
14 appointed by the State Board of Medical Licensure and Supervision to
15 carry out specified duties.

16 M. The Allied Professional Peer Assistance Program may contract
17 with outside entities for services that are not available to it or
18 can be obtained for a lesser cost through such a contract. The
19 contract shall be ratified by the Board.

20 SECTION 6. This act shall become effective November 1, 2017.

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