

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

SENATE BILL 349

4
5 By: Senator Gwatney
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For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE MEDICAL
10 PRACTICES ACT; TO AUTHORIZE THE ARKANSAS STATE MEDICAL
11 BOARD TO EMPLOY A MEDICAL DIRECTOR; TO CLARIFY THE
12 TYPES OF UNPROFESSIONAL CONDUCT; TO IMPROVE THE
13 PROCESS FOR HEARINGS ON LICENSURE SANCTIONS; AND FOR
14 OTHER PURPOSES.

Subtitle

16
17 AN ACT TO AMEND VARIOUS SECTIONS OF THE
18 MEDICAL PRACTICES ACT.
19
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code 17-95-202 is amended to read as follows:
24 17-95-202. Definitions.

25 As used in subchapters 2-4 of this chapter, unless the context otherwise
26 requires:

27 (1) "Board" means the Arkansas State Medical Board; and

28 (2) "Practice of medicine" means:

29 (A) Holding out one's self to the public within this state as
30 being able to diagnose, treat, prescribe for, palliate, or prevent any human
31 disease, ailment, injury, deformity, or physical or mental condition, whether
32 by the use of drugs, surgery, manipulation, electricity, or any physical,
33 mechanical, or other means whatsoever;

34 (B) Suggesting, recommending, prescribing, or administering any
35 form of treatment, operation, or healing for the intended palliation, relief,
36 or cure of any physical or mental disease, ailment, injury, condition, or

1 defect of any person with the intention of receiving, either directly or
2 indirectly, any fee, gift, or compensation whatsoever;

3 (C) The maintenance of an office or other place to meet persons
4 for the purpose of examining or treating persons afflicted with disease,
5 injury, or defect of body or mind;

6 (D) Using the title "M. D.," "M. B.," "D. O.," "physician,"
7 "surgeon," or any word or abbreviation to indicate or induce others to believe
8 that one is engaged in the diagnosis or treatment of persons afflicted with
9 disease, injury, or defect of body or mind, except as otherwise expressly
10 permitted by the laws of this state relating to the practice of any limited
11 field of the healing arts; or

12 (E) Performing any kind of surgical operation upon a human being.

13
14 SECTION 2. Arkansas Code 17-95-301(b)(4), concerning membership on the
15 Arkansas State Medical Board, is amended to read as follows:

16 (4) One (1) member shall be a duly qualified, licensed, and
17 ~~active practitioner of osteopathy~~ practicing osteopathic physician and
18 appointed upon the recommendation of the Arkansas Osteopathic Medical
19 Association.

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21 SECTION 3. Arkansas Code 17-95-301(d)(4), authorizing the Governor to
22 fill by appointment any vacancies in the membership of the Arkansas State
23 Medical Board, is amended to read as follows:

24 (4) In the event a vacancy exists in the member position of the
25 licensed ~~osteopath~~ osteopathic physician appointed upon the advice and
26 recommendation of the Arkansas Osteopathic Medical Association due to death,
27 resignation, or other cause, a successor member to the position shall be
28 appointed by the Governor for the remainder of the unexpired portion of the
29 term thereof in the same manner as provided in this subchapter for the initial
30 appointment.

31
32 SECTION 4. Arkansas Code 17-95-303 is amended to read as follows:

33 17-95-303. Powers and duties.

34 The board shall:

35 (1) Make and adopt all necessary rules, regulations, and bylaws not
36 inconsistent with the laws of this state or of the United States, necessary or

convenient to perform the duties and to transact the business required by law;

(2) Have authority to promulgate and put into effect such rules and regulations as are necessary to carry out the purposes of subchapters 2-4 of this chapter and the intentions expressed therein;

(3) Have authority to employ attorneys to represent the board in all legal matters at a compensation approved by the board. Contracts for employment of attorneys shall be filed by the secretary of the board with the Legislative Council. The board shall further have authority to request the assistance of the Attorney General and the prosecuting attorneys of Arkansas in such manner as it deems necessary and proper;

(4) Have the authority to employ an executive secretary to carry out the purposes and the mandates of the Arkansas State Medical Board and to supervise the other employees of the board;

(5) Have the authority to employ a medical director, who shall hold a valid license to practice medicine in this state, to evaluate medical issues and assist in investigations pending before the board;

~~(5)(6)~~ Have the power and authority to employ such secretarial and administrative assistance as may be necessary to carry out the provisions of subchapters 2-4 of this chapter and the duties of the board to protect the people of the State of Arkansas;

~~(6)(7)~~ Have the power and authority to employ one (1) or more inspectors as may be necessary to carry out the provisions of subchapters 2-4 of this chapter and the duties of the board to protect the people of the State of Arkansas; and

~~(7)(8)~~ Examine, as is provided for by law, all applicants for a license to practice medicine in this state.

SECTION 5. Arkansas Code 17-95-409(a) is amended to read as follows:

(a)(1) The board may revoke an existing license, ~~suspend an existing license~~ impose penalties as listed in § 17-95-410, or refuse to issue a license in the event the holder or applicant, as the case may be, has committed any of the acts or offenses defined in this section to be unprofessional conduct.

(2) The words "unprofessional conduct", as used in subchapters 2-4 of this chapter, are declared to mean:

(A)(i) Conviction of any crime involving moral turpitude or

1 conviction of a felony.

2 (ii) The judgment of any such conviction, unless
3 pending upon appeal, shall be conclusive evidence of unprofessional conduct;

4 (B) Resorting to fraud, misrepresentation, or deception in
5 applying for or securing a license to practice medicine or in taking the
6 examination for the license, or in seeking a renewal of a license;

7 (C) Aiding or abetting an unlicensed person to practice
8 medicine;

9 (D) Procuring or aiding or abetting in procuring a wrongful
10 and criminal abortion;

11 (E) Violation of the laws of the United States or the State
12 of Arkansas regulating the possession, distribution, or use of narcotic or
13 controlled drugs classed in Schedules 1-5 of the Controlled Substances Act of
14 1970 or the Uniform Controlled Substances Act, § 5-64-101 et seq., including
15 any amendments thereto;

16 (F) Habitual indulgence in the use of alcohol to such an
17 extent as to render himself incapable of exercising that degree of skill and
18 judgment in the treatment of his patients which the moral trust and confidence
19 in him demands;

20 (G) Grossly negligent or ignorant malpractice;

21 (H) Habitual, intemperate, or excessive use of narcotics or
22 of any other habit-forming drugs;

23 (I) Representing to a patient that a manifestly incurable
24 condition of sickness, disease, or injury can be permanently cured;

25 (J) Becoming physically or mentally incompetent to practice
26 medicine to such an extent as to endanger the public;

27 (K) Insanity or mental disease, if evidenced by an
28 adjudication or by voluntary commitment to an institution for treatment of a
29 mental disease or as determined by an examination conducted by three (3)
30 impartial psychiatrists retained by the board;

31 (L)(i) Soliciting for patronage;

32 (ii) Advertising for patronage in a false,
33 fraudulent, deceptive, or misleading manner;

34 (iii) Advertising the quality of medical services; or

35 (iv) Advertising illegal procedures and practices;

36 (M) Offering, undertaking, attempting, or agreeing to cure

1 or treat disease by a secret method, procedure, treatment, or medicine, or
 2 representing, directly or indirectly, that he can treat, operate on, or
 3 prescribe for any human condition by a method, means, or procedure which he
 4 refuses to divulge upon demand to the Arkansas State Medical Board;

5 (N) The willful betraying of a professional secret; ~~and~~

6 (O) Persistent and flagrant overcharging or overtreating of
 7 patients;

8 (P) Violating a regulation of the board; and

9 (Q) Violating a term of probation or an order previously
 10 imposed by the board.

11
 12 SECTION 6. Arkansas Code 17-95-410 is amended to read as follows:

13 17-95-410. Denial, suspension, or revocation - Proceedings.

14 (a) Any person may file a complaint with the board against any person
 15 having a license to practice medicine in this state charging him with:

16 (1) Failure to have the necessary qualifications as set out in §
 17 17-95-403; and

18 (2) The commission of any of the offenses enumerated and
 19 described as unprofessional conduct in § 17-95-409.

20 ~~(b)(1) The complaint shall set forth a specification of charges in~~
 21 ~~sufficient detail that the person so accused shall have full and complete~~
 22 ~~disclosure to him of any alleged acts of misconduct, impropriety, or lack of~~
 23 ~~qualifications.~~

24 ~~(2) When a complaint is filed, the secretary of the board shall~~
 25 ~~mail a copy of it to the person so accused by registered mail, at his last~~
 26 ~~address of record, with a written notice of the time and place of the hearing,~~
 27 ~~advising him that he may be present in person and by counsel if he so desires~~
 28 ~~to offer evidence and be heard in his defense.~~

29 ~~(3) The time fixed for such hearing shall not be less than thirty~~
 30 ~~(30) days from the date of the mailing of the notice.~~

31 If the board finds a probable violation of the Medical Practices Act or the
 32 regulations of the board, the board shall review the complaint and issue an
 33 order and notice of hearing to the licensee.

34 (c)(1) The order and notice of hearing shall set forth a specification
 35 of charges in sufficient detail that the person accused shall have full and
 36 complete disclosure of any alleged acts of misconduct, impropriety, or lack of

1 qualification.

2 (2) When an order and notice of hearing is issued, the board or
 3 its agent shall send by registered mail to the person's last address of record
 4 a copy of the order and notice of hearing along with a written notice of the
 5 time and place of the hearing and a statement advising the person that he or
 6 she may be present in person or by counsel to offer evidence and be heard in
 7 his or her defense.

8 (3) The time fixed for the hearing shall not be less than thirty
 9 (30) days from the date of the mailing of the notice.

10 ~~(e)~~(d) At the time and place fixed for a hearing before the board, the
 11 board shall receive evidence upon the subject under consideration and shall
 12 accord the person against whom charges are preferred a full and fair
 13 opportunity to be heard in his defense. The board shall not be bound by strict
 14 or technical rules of evidence, but shall consider all evidence fully and
 15 fairly. However, all oral testimony considered by the board must be under
 16 oath.

17 ~~(d)~~(e)(1) At the conclusion of the hearing, the board shall first
 18 decide whether the accused is guilty of the charges against him, and then
 19 decide on appropriate disciplinary action.

20 (2) If the accused is found not guilty, the board shall dismiss
 21 the charges.

22 (3) If the accused is found guilty, the board may do one or more
 23 of the following:

24 (A) Revoke his license;

25 (B) Suspend his license for a period not to exceed one (1)
 26 year;

27 (C) Issue a reprimand;

28 (D) Impose a probation allowing the licensee to continue
 29 practicing under terms and conditions found to be in the best interest of the
 30 accused and the general public; or

31 (E) Levy a fine of up to one thousand dollars (\$1,000) per
 32 violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., and
 33 collect out-of-pocket costs of investigation incurred by the board to conduct
 34 the disciplinary hearing.

35 (4) If the board suspends the license, it may issue a temporary
 36 license for whatever duration it decides and renew this temporary license at

1 its discretion.

2 ~~(e)~~(f) Appeals may be had by either of the parties from the decision of
3 the board in the manner now provided by law. All evidence considered by the
4 board shall be reduced to writing and available for the purpose of appeal or
5 certiorari to any of the parties of the hearing.

6 ~~(f)~~(g) Nothing in this section shall be construed so as to deprive any
7 person of his rights without full, fair, and impartial hearing.