

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1958

4
5 By: Representatives T. Thomas, Simon, Ferrell
6
7

For An Act To Be Entitled

9 "AN ACT TO PREVENT THE ASSISTING OF SUICIDE; PROVIDING
10 CRIMINAL PENALTIES, INJUNCTIVE RELIEF, AND CIVIL
11 DAMAGE AWARDS; PROVIDING FOR ATTORNEYS' FEES;
12 PROVIDING FOR PROFESSIONAL DISCIPLINE; AND FOR OTHER
13 PURPOSES. "

Subtitle

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16 "TO PREVENT THE ASSISTING OF SUICIDE;
17 PROVIDING CRIMINAL PENALTIES, INJUNCTIVE
18 RELIEF AND CIVIL DAMAGE AWARDS;
19 PROVIDING FOR ATTORNEYS' FEES; PROVIDING
20 FOR PROFESSIONAL DISCIPLINE. "

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22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Purpose. The purpose of this act is to protect vulnerable
26 persons from suicide and to reduce the cost to taxpayers of enforcing the
27 assisted-suicide laws by promoting civil enforcement by those directly injured
28 and providing for reimbursement of their attorney's fees by those found to be
29 violating the law.

30
31 SECTION 2. Definitions.

32 (a) "Licensed health care professional" means a physician and surgeon,
33 podiatrist, osteopath, osteopathic physician and surgeon, physician assistant,
34 nurse, dentist, or pharmacist licensed by this state.

35 (b) "Suicide" means the act or instance of intentionally taking one's
36 own life.

SECTION 3. Prevention of assisting suicide.

A person commits a Class D felony when the person, with the purpose of assisting another person to commit or to attempt to commit a suicide, knowingly either:

(a) Provides the physical means by which another person commits or attempts to commit suicide; or

(b) Participates in a physical act by which another person commits or attempts to commit suicide.

SECTION 4. Acts or omissions not considered assisting suicide.

(a) None of the following shall be construed to violate Section 3:

(1) The withholding or withdrawing of medical treatment or care;

(2) The withholding or withdrawing of nutrition or hydration; or

(3) The administration, prescription, or dispensing of medications or procedures, by or at the direction of a licensed health care professional, for the purpose of alleviating another's pain or discomfort, even if the medication or procedure may increase the risk of death, so long as the medication or procedure is not also administered, prescribed, or dispensed for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(b) This section shall not be construed to affect the duty of care or legal requirements other than those in this act concerning acts or omissions under subsection (a) of this section.

SECTION 5. Injunctive relief.

A cause of action for injunctive relief may be maintained against any person who is reasonably believed to be about to violate or who is in the course of violating Section 3 by any person who is:

(a) The spouse, parent, child, or sibling of the person who would commit suicide;

(b) Entitled to inherit from the person who would commit suicide;

(c) A current or former health care provider of the person who would commit suicide;

(d) A legally appointed guardian of the person; or

(e) A public official with appropriate jurisdiction to prosecute or

1 enforce the laws of this state.

2 Such an injunction shall legally prevent the person from assisting any
 3 suicide in this state regardless of who is being assisted.

4
 5 SECTION 6. Civil damages.

6 Any person given standing by Section 5 or the person who would have
 7 committed suicide, in the case of an attempt, may maintain a cause of action
 8 for compensatory damages and punitive damages against any person who violates
 9 or attempts to violate Section 3. An action under this section may be brought
 10 whether or not the plaintiff had prior knowledge of the violation or attempt.

11
 12 SECTION 7. Attorney's fees.

13 In any action or proceeding brought pursuant to Sections 5 or 6, the
 14 court shall allow the prevailing plaintiff a reasonable attorney's fee as part
 15 of its costs. If the defendant prevails, and the court finds that the action
 16 or proceeding was brought frivolously or in bad faith, the court shall allow
 17 the defendant a reasonable attorney's fee as part of its costs.

18
 19 SECTION 8. Arkansas Code 17-95-409(a) is amended to read as follows:

20 "(a)(1) The board may revoke an existing license, suspend an existing
 21 license, or refuse to issue a license in the event the holder or applicant, as
 22 the case may be, has committed any of the acts or offenses defined in this
 23 section to be unprofessional conduct.

24 (2) The words 'unprofessional conduct', as used in subchapters 2-
 25 4 of this chapter, are declared to mean:

26 (A)(i) Conviction of any crime involving moral turpitude or
 27 conviction of a felony.

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

30 (B) Resorting to fraud, misrepresentation, or deception in
 31 applying for or securing a license to practice medicine or in taking the
 32 examination for the license;

33 (C) Aiding or abetting an unlicensed person to practice
 34 medicine;

35 (D) Procuring or aiding or abetting in procuring a wrongful
 36 and criminal abortion;

1 (E) Violation of the laws of the United States or the State
 2 of Arkansas regulating the possession, distribution, or use of narcotic or
 3 controlled drugs classed in Schedules 1-5 of the Controlled Substances Act of
 4 1970 or the Uniform Controlled Substances Act, § 5-64-101 et seq., including
 5 any amendments thereto;

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

10 (G) Grossly negligent or ignorant malpractice;

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

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

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

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

21 (L)(i) Soliciting for patronage;

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

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

25 (iv) Advertising illegal procedures and practices;

26 (M) Offering, undertaking, attempting, or agreeing to cure
 27 or treat disease by a secret method, procedure, treatment, or medicine, or
 28 representing, directly or indirectly, that he can treat, operate on, or
 29 prescribe for any human condition by a method, means, or procedure which he
 30 refuses to divulge upon demand to the Arkansas State Medical Board;

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

32 (O) Persistent and flagrant overcharging or overtreatment of
 33 patients; and

34 (P) Assisting suicide in violation of Section 3 as
 35 established by any of the following:

36 (i) A copy of the record of criminal conviction or

1 plea of guilty for a felony in violation of Section 3.

2 (ii) A copy of the record of a judgment of contempt
 3 of court for violating an injunction issued under Section 5.

4 (iii) A copy of the record of a judgment assessing
 5 damages under Section 6."

6
 7 SECTION 9. Arkansas Code 17-96-308(c) is amended to read as follows:

8 "(c)(1) The board may, after hearing, refuse to issue a certificate and
 9 cancel or suspend the registration of any person registered under the
 10 provisions of this chapter who, after investigation and hearing, shall be
 11 found guilty of grossly unprofessional and dishonest conduct. The board may,
 12 impose a penalty not to exceed one thousand dollars (\$1,000) for each
 13 violation, require completion of appropriate educational programs or courses,
 14 place conditions or restrictions upon the licensee's license or practice, or
 15 such other requirements or penalties as may be appropriate to the
 16 circumstances of the case and which would achieve the desired disciplinary
 17 purposes, but which would not impair the public welfare and morals.

18 (2) 'Unprofessional and dishonest conduct' means, but is not
 19 limited to:

20 (A) The willful betrayal of a professional secret;

21 (B) Having professional connections with, or lending the
 22 use of one's name to, an unregistered podiatrist or having professional
 23 connection with anyone who has been convicted in any court of any criminal
 24 offense whatsoever;

25 (C) Being guilty of an offense involving moral turpitude;

26 (D) Habitual intemperance;

27 (E) Being habitually addicted to the use of morphine,
 28 opium, cocaine, or other drugs for other use than legal and legitimate
 29 purposes;

30 (F) Advertising in a false, fraudulent, deceptive or
 31 misleading manner;

32 (G) Becoming physically or mentally incompetent to practice
 33 podiatric medicine as to endanger the public; ~~or~~

34 (H) Gross negligence or malpractice; or

35 (I) Assisting suicide in violation of Section 3 as
 36 established by any of the following:

1 (i) A copy of the record of criminal conviction or
 2 plea of guilty for a felony in violation of Section 3.

3 (ii) A copy of the record of a judgment of contempt
 4 of court for violating an injunction issued under Section 5.

5 (iii) A copy of the record of a judgment assessing
 6 damages under Section 6."

7
 8 SECTION 10. Arkansas Code 17-87-309(a) is amended to read as follows:

9 “(a) The board shall have sole authority to deny or suspend any license
 10 to practice nursing or certificate of prescriptive authority issued by the
 11 board or applied for in accordance with the provisions of this chapter or to
 12 otherwise discipline a licensee upon proof that the person:

13 (1) Is guilty of fraud or deceit in procuring or attempting to
 14 procure a license to practice nursing;

15 (2) Is guilty of a crime or gross immorality;

16 (3) Is unfit or incompetent by reason of negligence, habits, or
 17 other causes;

18 (4) Is habitually intemperate or is addicted to the use of habit-
 19 forming drugs;

20 (5) Is mentally incompetent;

21 (6) Is guilty of unprofessional conduct;

22 (7) Has had a license, certificate, or registration revoked,
 23 suspended, or placed on probation or under disciplinary order in any
 24 jurisdiction;

25 (8) Has voluntarily surrendered a license, certification, or
 26 registration and has not been reinstated in any jurisdiction; ~~or~~

27 (9) Has willfully or repeatedly violated any of the provisions of
 28 this chapter; ~~or~~ or

29 (10) Has violated Section 3 as established by any of the
 30 following:

31 (A) A copy of the record of criminal conviction or plea of
 32 guilty for a felony in violation of Section 3.

33 (B) A copy of the record of a judgment of contempt of court
 34 for violating an injunction issued under Section 5.

35 (C) A copy of the record of a judgment assessing damages
 36 under Section 6."

SECTION 11. Arkansas Code 17-82-316(b) is amended to read as follows:

"(b) The board may:

(1) Place a licensee on probation for a period not exceeding eighteen (18) months under terms and conditions determined by the board to be in the best interest of the licensee and the people of the State of Arkansas;

(2) Impose a fine not to exceed one thousand dollars (\$1,000) per violation; or

(3) Impose one (1) or more of the above penalties for any of the following causes, in addition to other causes mentioned elsewhere in this chapter, shown at a hearing before it:

(A) The presentation to or filing with the board, for the purpose of securing a license to practice dentistry or dental hygiene, of any diploma, license, or certificate illegally or fraudulently obtained by the applicant;

(B) The use of an assumed or fictitious name in applying for a license for the purpose of shielding moral unfitness or a criminal record;

(C) The commission of any criminal operation; habitual drunkenness for a period of three (3) months; insanity; adjudication of insanity or mental incompetency if deemed detrimental to patients; conviction of an infamous crime or felony; addiction to narcotics; immoral, dishonorable, or scandalous conduct; professional incompetency; failure to maintain proper standards of sanitation or failure otherwise to maintain adequate safeguards for the health and safety of patients; employment in the practice of the profession of any drug, nostrum, unknown formula, or dangerous or unknown anesthetic, not generally used by the dental profession;

(D) The advertising of services to the public which is fraudulent and misleading or which does not comply with the rules and regulations of the board;

(E) Permitting any unlicensed person under his supervision or control to perform any act, service, practice, or operation on any patient or prospective patient which constitutes a part of the practice of dentistry or dental hygiene or is involved with the administration of drugs, medicines, or anesthetics, except those services permitted by the board and under the supervision of a licensed dentist;

1 (F) Violation of any rule or regulation of board standards
 2 of professional conduct for dentists and dental hygienists practicing within
 3 the state;

4 (G) Assisting suicide in violation of Section 3 as
 5 established by any of the following:

6 (i) A copy of the record of criminal conviction or
 7 plea of guilty for a felony in violation of Section 3.

8 (ii) A copy of the record of a judgment of contempt
 9 of court for violating an injunction issued under Section 5.

10 (iii) A copy of the record of a judgment assessing
 11 damages under Section 6."

12
 13 SECTION 12. Arkansas Code 17-92-311(a) is amended to read as follows:

14 "(a) The Arkansas State Board of Pharmacy may revoke an existing
 15 license of a licensed pharmacist or may suspend the license or may refuse to
 16 issue a license if the holder or applicant, as the case may be, has committed
 17 or is found guilty by the board of any of the following acts or offenses set
 18 forth:

19 (1) That the person is guilty of fraud, deceit, or
 20 misrepresentation in the practice of pharmacy;

21 (2) That the person is unfit or incompetent to practice pharmacy
 22 by reason of negligent performance of his duties;

23 (3) That the person has been found guilty or pleaded guilty or
 24 nolo contendere in a criminal proceeding, regardless of whether or not the
 25 adjudication of guilt or sentence is withheld, by a court of this state,
 26 another state, or the federal government for:

27 (A) Any felony;

28 (B) Any act involving moral turpitude, gross immorality, or
 29 which is related to the qualifications, functions, and duties of a licensee;
 30 or

31 (C) Any violation of the pharmacy or drug laws of this
 32 state or rules and regulations pertaining thereto, or of the pharmacy or drug
 33 statutes, rules, and regulations of any other state or of the federal
 34 government;

35 (4) That the person has become insane or has been adjudged by a
 36 court of competent jurisdiction to be of unsound mind;

1 (5) That the person has directly or indirectly aided or abetted
 2 the practice of pharmacy by a person not authorized to practice pharmacy by
 3 the Arkansas State Board of Pharmacy;

4 (6) That the person has been guilty of fraud or misrepresentation
 5 in obtaining a license to practice pharmacy in the State of Arkansas as a
 6 licensed pharmacist;

7 (7) That the person has been guilty of gross unprofessional or
 8 dishonorable conduct;

9 (8) That the person has willfully violated any of the provisions
 10 of the pharmacy laws of the State of Arkansas;

11 (9) That the person is addicted to the use of intoxicating
 12 liquors or drugs to such a degree as to render him unfit, in the opinion of
 13 the board, to manufacture, compound, sell, or dispense drugs or medicine;

14 (10) That the person knowingly adulterated or caused to be
 15 adulterated any drugs, chemical, or medical preparations and offered such
 16 preparations for sale; ~~or~~

17 (11) That the person had his license to practice pharmacy
 18 revoked, suspended, or had other disciplinary action taken, or had his
 19 application for a license refused, revoked, or suspended, or had voluntarily
 20 or otherwise surrendered his license after a disciplinary action was
 21 instituted by a duly authorized professional disciplinary agency of another
 22 state; or

23 (12) That the person has violated Section 3 as established by any
 24 of the following:

25 (A) A copy of the record of criminal conviction or plea of
 26 guilty for a felony in violation of Section 3.

27 (B) A copy of the record of judgment of contempt of court
 28 for violating an injunction issued under Section 5.

29 (C) A copy of the record of a judgment assessing damages
 30 under Section 6."

31
 32 SECTION 13. The Arkansas Code Revision Commission shall assign
 33 appropriate code section numbers to Sections 1 through 7 of this act and shall
 34 substitute the appropriate code section numbers assigned to Sections 3, 5 and
 35 6 of this act for the references to Sections 3, 5 and 6 of this act contained
 36 in Arkansas Code Sections 17-95-409(a), 17-96-308(c), 17-87-309(a), 17-82-

1 316(b), and 17-92-311(a) as amended by this act.

2
3 SECTION 14. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same in the Code.

6
7 SECTION 15. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

12
13 SECTION 16. All laws and parts of laws in conflict with this act are
14 hereby repealed.