

No. 1978-261

## AN ACT

HB 1885

Requiring the licensing of practitioners of osteopathic medicine and surgery; regulating their practice; providing for certain funds and penalties for violations and repeals.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Osteopathic Medical Practice Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Affiliate." A member of a group of two or more fully accredited health care institutions under an agreement of affiliation approved by the board to enhance the potential of all participants in the provision of health care and osteopathic or medical education.

"Approved hospital." A hospital which has been approved by the

board for providing supervised graduate osteopathic medical training.

**"Board."** The State Board of Osteopathic Medical Examiners in the Department of State. Any reference in any statute or rule to the State Board of Osteopathic Examiners shall, on and after the effective date of this act, be construed to be a reference to the State Board of Osteopathic Medical Examiners.

**"Certification."** The approval of individuals by the board to serve as physician assistants. It shall also mean the approval of programs by the board for the training and education of physician assistants.

**"Clinical clerk."** An undergraduate student in an osteopathic medical college assigned to make patient histories, physical examinations and to perform certain procedures and laboratory tests for the purpose of instruction and experience. His notes shall become official only when edited and countersigned by a member of the hospital staff licensed pursuant to this act. Nothing contained in this act shall be construed to entitle a clinical clerk to practice medicine or surgery or to prescribe drugs.

**"Healing art."** The science and skill of diagnosis and treatment of diseases of the human body.

**"Health care facility."** A general, tuberculosis, mental, chronic disease or other type of hospital, an ambulatory clinic or center, a health maintenance organization, institution and corporation medical departments and centers, student health centers, a physical rehabilitation facility, a skilled or intermediate care nursing facility, a radiology laboratory, a renal dialysis center, a diagnostic center, a home health care agency, or a clinical laboratory, regardless of whether such medical care facility is for profit, nonprofit or governmental; or a program affiliated with a medical care facility which renders treatment or care for drug or alcohol abuse or dependence; or other settings where medical care and services are rendered.

**"Hospital."** An institution accredited by the American Osteopathic Association, the Joint Commission on Accreditation of Hospitals or regulated by the Commonwealth of Pennsylvania to render health care.

**"Intern."** A physician receiving supervised graduate osteopathic medical training at an approved hospital or its affiliate.

**"Osteopathic medical college."** An institution of higher learning accredited by the American Osteopathic Association, its successors and assigns, as an agency to provide courses in the arts and sciences of medicine and related subjects and empowered to grant academic degrees in osteopathic medicine and surgery.

**"Osteopathic medicine and surgery."** The art and science having for its object the cure of disease and the preservation of the health of man with or without drugs, except healing by spiritual means or prayer.

**"Physician."** A person who has received formal and recognized training in the art and science of osteopathic medicine qualified to seek or who has acquired a license to practice osteopathic medicine and surgery.

**"Physician assistant."** A person certified by the board to assist a

physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

“Proficiency examination.” An examination approved by the board for the national certification of physician assistants, including those examinations, approved for such purpose by the National Commission on Certification of Physician Assistants.

“Resident.” A physician receiving supervised graduate osteopathic medical training at an approved hospital or its affiliate.

### Section 3. Practice of osteopathic medicine and surgery without license prohibited.

It shall be unlawful for any person to engage in the practice of osteopathic medicine and surgery, or pretend to a knowledge of any branch or branches of osteopathic medicine and surgery, or to hold himself out as a practitioner in osteopathic medicine and surgery, or to assume the title of Doctor of Osteopathic Medicine and Surgery or doctor of any specific disease, or to diagnose diseases or to treat diseases by the use of osteopathic medicine and surgery or by any other means, or to sign any birth or death certificate unless otherwise authorized by law, or to hold himself out as able to do so, unless he has received a certificate of licensure or permission from the board which license shall be recorded in the office of the board. Nothing in this act shall be construed to prohibit services and acts rendered by a qualified physician assistant, technician or other allied medical person if such services and acts are rendered under the supervision, direction or control of a licensed physician. It shall be unlawful for any person to practice as a physician assistant unless certified and approved by the board. It shall also be unlawful for any physician assistant to render medical care and services except under the supervision and direction of the supervising physician.

### Section 4. Power to license.

The board may grant the following licenses:

(1) Unrestricted license.—A license to practice osteopathic medicine and surgery without restriction.

(2) Temporary license.—A graduate of an osteopathic medical college qualifying under this act may, on receiving his degree as a doctor of osteopathy, apply to the board for a temporary license on its form and pay the registration. A temporary license shall be valid for 12 months thereafter and shall be recognized only as conferring upon the licensee the right to participate in approved graduate osteopathic or medical training within the complex of the hospital to which he is assigned. It shall become null and void after 12 months and shall then be surrendered to the board. The board may extend the validity of a temporary license.

### Section 5. Standards for osteopathic medical training and facilities.

(a) The educational qualifications for acceptance as a matriculant in an osteopathic medical college incorporated within the Commonwealth and

the curricula and training to be offered by such colleges shall meet the requirements set by the board after advice and consultation with the appropriate committees of the American Osteopathic Association or any other accrediting body which is recognized by the board.

(b) It shall be the duty of the board to periodically ascertain the character of the instruction and the facilities of the osteopathic medical colleges and hospitals offering or desiring to offer osteopathic medical training. It shall ascertain the facilities and qualifications of osteopathic medical institutions, colleges, or hospitals, outside this Commonwealth whose graduates or trainees desire to obtain osteopathic medical licensure or graduate osteopathic medical training in this Commonwealth.

(c) An osteopathic medical institution authorized to confer academic degrees in osteopathic medicine which in the judgment of the board fails to provide proper facilities, or to maintain the minimum requirements for accreditation shall be notified of such failure. Until such deficiencies are corrected its graduates shall not be eligible for licensure or graduate osteopathic medical training.

(d) Requirements for the certification of training and educational programs for physician assistants shall be formulated by the board in accordance with such national criteria as are established by national organizations or societies as the board may accept.

#### Section 6. Qualifications for license.

(a) A graduate of an osteopathic medical college in the United States who seeks licensure by the board shall furnish the board with evidence, prior to any examination, that he is of good moral character, is not addicted to habit-forming drugs, and has completed the educational requirements prescribed by the board.

(b) An application to the board shall have attached to it the affidavit or affirmation of the applicant as to its verity. An applicant who knowingly makes a false statement of fact in his application shall be in violation of this act.

#### Section 7. Certification of license.

The fact of licensure to practice osteopathic medicine and surgery shall be certified to by the board to other jurisdictions upon application and the payment by the licensee of a fee providing the licensee is in good standing.

#### Section 8. Meetings of the board; examinations.

(a) The board shall hold six meetings to transact its business each year in Pennsylvania at a place determined by the board. It shall hold at least two examinations for applicants for licensure each year.

(b) The examinations conducted by the board shall be in the English language. Special examinations may be designated and held at the times and places designated by the board.

(c) The board may accept by endorsement currently licensed osteopathic physicians qualified by either the National Board or by Flex

examination or by any other state or territorial examination acceptable to the board for the purpose of licensure.

(d) Whenever an applicant fails an examination he shall have, after the expiration of six months and within two years, the privilege of a second examination by the board. If he fails the second examination he shall apply de novo after a year of graduate study approved by the board, and qualify for a license under the conditions existing at the time of his application.

(e) An applicant for a license to practice osteopathic medicine and surgery who has been successfully examined by an agency considered competent by the board who presents to the board satisfactory evidence of having fulfilled all the requirements of this act and the regulations of the board, may, without further examination, receive from the board a license conferring all the rights accorded by this act provided he has paid a fee and provided he has not previously failed a licensing examination given by the board.

(f) For the purpose of preparing, conducting and grading examinations the members of the board shall be compensated for their services at a reasonable rate for each activity in an amount determined from time to time by the board in addition to expenses. The total amount of compensation authorized pursuant to this subsection shall not exceed \$30 per day.

#### Section 9. Endorsement.

Endorsement may be established at the direction of the board.

#### Section 10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration.

(a) Physicians who have complied with the requirements of the board, have passed a final examination, and have otherwise complied with the provisions of this act shall receive from the Commissioner of Professional and Occupational Affairs in the Department of State, or whoever exercises equivalent authority, a license entitling them to practice osteopathic medicine and surgery without restriction in this Commonwealth. The license shall be recorded in the office of the board in a record to be kept for that purpose. It shall be open to public inspection. A certified copy of the record shall be received as evidence in all courts in this Commonwealth. This section shall not apply to medical officers in the medical service of the armed forces of the United States, the United States Public Health Service, the Veterans Administration, or physicians employed within Federal services while in discharge of their official duties, to anyone who may be a duly licensed practitioner of osteopathic medicine and surgery in any jurisdiction who may be called upon by a licensed physician of this Commonwealth to consult with him in a case under treatment, to physicians of other jurisdictions who are training for certification in special departments of osteopathic medicine and surgery, or to anyone serving as a clinical clerk under the supervision of the osteopathic medical or surgical staff in any hospital. Nothing contained in this section shall be construed to

entitle a clinical clerk to practice osteopathic medicine and surgery or to prescribe drugs. A duly licensed physician residing in or maintaining his office of practice in a state near the boundary line between said state and this Commonwealth whose practice extends into this Commonwealth shall have the right to practice in this Commonwealth, at the discretion of the board, provided he files with the secretary of the board a certified copy of his license in the state where he resides, and that the board of examiners of the adjoining state reciprocates by extending the same privilege to physicians in this Commonwealth. He shall receive from the secretary of the board a license which shall automatically become null and void whenever he changes his residence or office of practice. A record of all persons so licensed shall be kept in the office of the board and shall have the same efficacy as any other license issued by the board.

(b) Physicians who are legally authorized to practice osteopathic medicine and surgery in this State or other states or territories of the United States or the Dominion of Canada who apply for training and certification in special departments of osteopathic medicine and surgery in institutions in this Commonwealth recognized by the board with advice and consultation with the various examining boards in osteopathic medical specialties approved by the Council on Osteopathic Education of the American Osteopathic Association as proper for such training, shall receive a graduate certificate limited to said training within the complex of the hospital or its affiliates or community hospitals where he is engaged in such training. This training experience shall not be converted into a staff service. The certificate shall be valid for one year. It may be renewed from year to year. A person who has been certified in a specialty discipline recognized by the board who makes an application for licensure to practice osteopathic medicine and surgery without restriction in the Commonwealth, upon the payment of a fee may be given a qualifying examination. The examination shall emphasize the subject matter of the specialty discipline for which the applicant has been trained. It may include material from the general field of osteopathic medical science.

(c) It shall be the duty of those licensed to practice osteopathic medicine and surgery without restriction to register with the board and to reregister at such intervals and by such methods as the board shall for a period determine. Such renewal period shall not be longer than two years. The form and method of such registration shall be determined by the board.

(d) A person registering with the board shall pay, for each biennial registration, a fee. It shall accompany the application for registration.

(e) Upon receiving a proper application for registration accompanied by the fee, the board shall issue its certificate of registration to the applicant. It and its renewals shall be good and sufficient evidence of registration.

(f) The board shall grant certification to physician assistants and shall be suspect to biennial renewal by the board. The board shall grant

certification to applicants who have fulfilled the following criteria:

(1) Satisfactory performance on the proficiency examination, to the extent that a proficiency examination exists.

(2) Satisfactory completion of a certified program for the training and education of physician assistants.

In the event that completion of a formal training and educational program is a prerequisite to taking the proficiency examination, the board shall have the power if it determines that the experience of the applicant is of such magnitude and scope so as to render further formal training and education nonessential to the applicant in assisting a physician in the provision of medical care and services, to waive the training and education requirements under this section.

(g) The supervising physician shall file with the board an application to utilize a physician assistant containing a description of the manner in which the physician assistant will assist the supervising physician in his practice, the method and frequency of supervision and the geographic location of the physician assistant. In no instance may a physician supervise more than two physician assistants at any time. In cases where a group of physicians will supervise a physician assistant, the names of all supervisory physicians shall be included on the application.

(h) The board shall establish such rules and regulations, relating to physician assistants, as it deems necessary to protect the public and to implement the provisions of this act, including, but not limited to reasonable procedures for identification of physician assistants and for informing patients and the public at large of the use of physician assistants.

(i) Information concerning the use of each type of physician assistant shall be collected and reports thereof furnished to the General Assembly annually by the board, including the geographic location of physician assistants and the setting of their practice, i.e., rural, clinic, hospitals or physician's offices.

(j) Nothing in this act shall be construed to permit a certified physician assistant to practice osteopathic medicine without the supervision and direction of a licensed physician approved by the appropriate board, but such supervision and direction shall not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered.

(k) This act shall not be construed to prohibit the performance by the physician assistant of any service within his skills, which is delegated by the supervising physician, and which forms a usual component of that physician's scope of practice.

(l) Nothing in this act shall be construed to prohibit the employment of physician assistants by a health care facility where such physician assistants function under the supervision and direction of a physician or group of physicians.

(m) The physician assistant being certified in this act and functioning under the supervision of the physician defines his/her status as an

employee and subject to the normal employer/employee reimbursement procedures.

(n) No medical services may be performed by a physician assistant under this act which include the measurement of the range of powers of human vision or the determination of the refractive status of the human eye. This subsection does not prohibit the performance of routine vision screenings or the performance of refractive screenings in the physician's office.

(o) Nothing in this act shall be construed to allow physician assistants to practice chiropractic.

(p) Nothing in this act shall be construed to permit a physician assistant to independently prescribe or dispense drugs. The board and State Board of Pharmacy will jointly develop regulations to permit a physician assistant to prescribe and dispense drugs at the direction of a licensed physician.

#### Section 11. Penalty provisions.

(a) Violations of act.—A person, or the responsible officer or employee of any corporation or partnership, institution or association, violating any of the provisions other than section 3 is guilty of a summary offense and upon conviction shall be sentenced to pay a fine of not more than \$300.

(b) Penalty for unlicensed practice.—A person, or the responsible officer or employee of any corporation or partnership, institution or association violating section 3 shall, upon conviction thereof, be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$1,000, nor more than \$10,000, or to imprisonment for five years, or both.

#### Section 12. Examination fees.

The board shall have the power to charge a fee for examinations.

#### Section 13. Fees and fines.

(a) All fees and fines collected under the provisions of this act shall be paid into the fund of the board as provided in the act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act." The provisions of the "Bureau of Professional and Occupational Affairs Fee Act" other than section 215 shall apply to the fees collected in accordance with this act.

(b) The fees of the board are set forth below:

Certification of licensure to another state . . .	\$ 25.00
Application for licensure by examination . . .	125.00
Application for licensure by endorsement . . .	100.00
Application for across the border license . . . .	50.00
Application for graduate training certificate . .	10.00
Biennial registration-osteopathic physician - up to . . . . .	75.00
Across the border biennial registration - up to . . . . .	50.00
Physician assistant initial certification . . . . .	10.00
Physician assistant biennial registration . . . . .	10.00

Application by osteopathic physician or group of osteopathic physicians to supervise a physician assistant . . . . .	25.00
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Section 14. Automatic suspension.

A license issued under this act shall automatically be suspended upon the commitment to an institution of a licensee because of mental incompetency upon filing with the board a certified copy of such commitment or conviction of a felonious act prohibited by "The Controlled Substance, Drug, Device and Cosmetic Act." Conviction shall include a finding or verdict of guilty by a judge or jury, plea or admission of guilt, or plea of nolo contendere. Restoration of such license shall be made as in the case of revocation or suspension of license.

Section 15. Reasons for refusal, revocation or suspension of license.

(a) The board shall have authority to refuse, revoke or suspend the license of a physician for any of the following reasons:

(1) Failing to demonstrate the qualifications or standards for a license provided in this act or the regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in the practice of osteopathic medicine and surgery, practicing fraud or deceit in obtaining a license to practice osteopathic medicine and surgery, or making a false or deceptive biennial registration with the board.

(3) Conviction of a felony, a crime involving moral turpitude, or a crime related to the practice of osteopathic medicine. Conviction shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(4) Having a license to practice osteopathic medicine and surgery revoked or suspended or having other disciplinary action taken, or an application for a license refused, revoked or suspended by the proper licensing authority of another state, territory or country.

(5) Being unable to practice osteopathic medicine and surgery with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of any mental or physical condition. The board shall, upon probable cause, have authority to compel a physician to submit to a mental or physical examination by physicians designated by the board. Failure of a physician to submit to such examination when directed shall constitute an admission of the allegations against him unless it is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected by such action shall, at reasonable intervals, be afforded an opportunity to demonstrate that he can resume a competent practice of osteopathic medicine and surgery with reasonable skill and safety to the patients.

(6) Violating a regulation promulgated by the board or an order of the board previously entered by it in a disciplinary proceeding.

(7) Knowingly maintaining a professional connection or association with a person who is in violation of this act or the regulations of the board or knowingly aiding, assisting, procuring or advising an unlicensed person to practice osteopathic medicine and surgery contrary to this act, or the regulations of the board.

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or the failure to conform to, the standards of acceptable and prevailing osteopathic medical practice. Actual injury to a patient need not be established.

(b) The board shall have authority to refuse, revoke or suspend the certification of a physician assistant for any or all of the following reasons:

(1) Failing to demonstrate the qualification for certification contained in this act or regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in his serving as a physician assistant; practicing fraud or deceit in obtaining a certification to serve as a physician assistant; or making a false or deceptive biennial registration with the board.

(3) Conviction of a felony in this Commonwealth or any other state, territory or country. Conviction as used in this paragraph shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(4) Having his certification to serve as a physician assistant revoked or suspended or having other disciplinary action taken, or his application for certification refused, revoked or suspended by the proper certifying authority of another state, territory or country.

(5) Being unable to serve as a physician assistant with reasonable skill and safety to the physician's patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(6) In enforcing paragraph (5), the board shall, upon probable cause, have authority to compel a physician assistant to submit to a mental or physical examination by physicians designated by it. Failure of a physician assistant to submit to such examination shall constitute an admission of the allegations against him unless the failure is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician assistant affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent assistance of a physician in the physician's practice of medicine, with reasonable skill and safety to the physician's patients.

(7) Violating a lawful regulation promulgated by the board or violating a lawful order of the board, previously entered by the board in a disciplinary proceeding.

(8) Knowingly rendering medical care and services except under the supervision and direction of the supervising physician.

(9) Being guilty of immoral or unprofessional conduct shall include any departure from, or the failure to conform to, the standards of acceptable and prevailing practice for physician assistants, in which proceeding actual injury to a patient need not be established.

(c) Whenever the board finds that the license or a certificate of a person may be refused, revoked or suspended under the terms of this act, the board may:

- (1) Deny the application for a license or certificate.
- (2) Administer a public or private reprimand.
- (3) Revoke, suspend, limit, or otherwise restrict a license or certificate.
- (4) Require a licensee or physician assistant to submit to the care, counseling, or treatment of a physician or physicians designated by the board.
- (5) Suspend enforcement of its finding thereof and place a licensee or physician assistant on probation with the right to vacate the probationary order for noncompliance.

(6) Restore or reissue a license to practice osteopathic medicine and surgery or certification as a physician assistant, and impose any disciplinary or corrective measure which it might originally have imposed.

(d) All actions of the board shall be taken subject to the right of notice, hearing, adjudication and appeal therefrom in accordance with the provisions of the "Administrative Agency Law."

Section 16. Regulatory powers of the board.

The board shall have the power to adopt and revise such regulations as are reasonably necessary to carry out the purposes of this act in conformity with the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

Section 17. Applicability of act.

(a) The provisions of this act shall not apply either directly or indirectly, by intent or purpose, to affect the practice of:

- (1) Pharmacy, as authorized by the acts approved April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," and September 27, 1961 (P.L.1700, No.699), known as the "Pharmacy Act."
- (2) Dentistry, as authorized by the act approved May 1, 1933 (P.L.216, No.76), known as "The Dental Law."
- (3) Optometry, as authorized by the act approved March 30, 1917 (P.L.21, No.10), referred to as the Optometry Practice Law.
- (4) Chiropractic, as authorized by the act of August 10, 1951 (P.L.1182, No.264), known as the "Chiropractic Registration Act of 1951."
- (5) "Podiatry, as authorized by the act of March 2, 1956 (P.L.1206, No.375), reenacted and amended by the act of August 24, 1963 (P.L.1199, No.505), known as the "Podiatry Act of 1956."

(6) Professional nursing, as authorized by the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

(7) Psychologists, as authorized by the act of March 23, 1972 (P.L.136, No.52), referred to as the Psychologists License Act.

(8) Medicine, as authorized by the act of July 20, 1974 (P.L.551, No.190), known as the "Medical Practice Act of 1974."

(b) This act shall not be construed to give the Board of Osteopathic Examiners any jurisdiction over any of the schools or colleges of the methods exempted in this act.

(c) The provisions of this act shall not apply to the practice of hypn sis.  
Section 18. Repeals.

(a) The act of March 19, 1909 (P.L.46, No.29), referred to as the Osteopathic Practice Law, is repealed.

(b) Section 215, act of July 1, 1978 (No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act," is repealed.

(c) All other acts or parts of acts inconsistent with this act are repealed.  
Section 19. Effective date.

This act shall take effect immediately.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP