



**Rules & Policies Agenda for Board Meeting
January 12, 2022**

- A. Rule Review Update
- B. Interstate Medical Licensing Compact Rule
- C. Rules for Final Adoption
- D. Internal Management Rule 4731-30-03, Final Adoption
- E. Controlled Substance Prescribing Rules
- F. Confidential Non-Disciplinary Letters
- G. Non-Disciplinary Voluntary Permanent Retirement Proposal
- H. Telehealth Rules
- I. FSMB Request for Comments on Draft Telemedicine Technologies Policy
- J. Legislative Update



MEMORANDUM

TO: Betty Montgomery, President
Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Rule Review Update

DATE: December 21, 2021

Attached please find the Rule Schedule and Spreadsheet for January 2022.

Requested Action: No action requested.

Legal Dept. Rules Schedule

As of December 21, 2021

RULES TO JANUARY BOARD MEETING

For Final Adoption

4731-6-05 4731-16-02 4731-16-05
4731-16-08 4731-22-07 4731-36-01
4731-30-03

For Approval - File with CSI

4731-38-01

For Approval - Initial Circulation

4731-11-09 4731-37-01

CSI Update and Circulation

4731-11-03 4731-11-04 4731-11-04.1

RULES FOR REVIEW AT MASSAGE THERAPY

ADVISORY COUNCIL

4731-1-01 4731-1-02 4731-1-03
4731-1-04 4731-1-05 4731-1-07
4731-1-08 4731-1-09 4731-1-10
4731-1-11 4731-1-12 4731-1-15
4731-1-16 4731-1-17 4731-1-18
4731-1-19

RULES FOR REVIEW AT PHYSICIAN ASSISTANT POLICY COMMITTEE

4731-18-01 4731-18-02 4731-18-03

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4730-1-01	Regulation of Physician Assistants - Definitions		06/12/19	07/16/19	11/07/19	06/18/20	No change rule			09/16/20	06/18/25
4730-1-05	Quality Assurance System		06/12/19	07/16/19	11/07/19	06/19/20	No change rule			09/17/20	06/19/25
4730-1-06	Licensure as a physician assistant	03/22/19	06/12/19	12/04/19		06/18/20	07/23/20	08/17/20	09/09/20	12/31/20	09/30/23
4730-1-07	Miscellaneous Provisions	01/25/21	04/14/21	04/26/21	06/04/21	09/22/21	10/29/21	11/08/21	12/08/21	12/31/21	09/30/23
4730-2-01	Physician Delegated Prescriptive Authority - Definitions		06/12/19	07/16/19	11/07/19	06/18/20	No change rule			09/18/20	06/18/25
4730-2-04	Period of on-site supervision of physician-delegated prescriptive authority		06/12/19	07/16/19	11/07/19	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	11/15/23
4730-2-05	Addition of valid prescriber number after initial licensure		06/12/19	07/16/19	11/07/19	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/23
4730-2-07	Standards for Prescribing	01/25/21	04/14/21	04/26/21	06/04/21	09/22/21	10/29/21	11/08/21	12/08/21	12/31/21	09/30/25
4730-2-10	Standards and Procedures for use of OARRS		06/12/19	07/16/19	11/07/19	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/23
4730-4-01	Definitions	05/09/19		11/15/19	05/20/20	06/18/20	07/23/20	08/17/20	10/14/20	10/31/20	04/30/24
4730-4-02	Standards and procedures for withdrawal management for drug or alcohol addition	05/09/19		11/15/19	05/20/20	06/18/20	07/23/20	08/17/20	10/14/20	10/31/20	10/31/25
4730-4-03	Office Based Treatment for Opioid addiction									04/30/19	04/30/24
4730-4-04	Medication assisted treatment using naltrexone									04/30/19	04/30/24
4730-5-01											
4730-5-02											
4731-1-01	Limited Practitioners - Definition of Terms	06/17/21								03/30/20	03/30/25
4731-1-02	Application of Rules Governing Limited Branches of Medicine or Surgery	06/17/21								07/31/19	07/31/24
4731-1-03	General Prohibitions	06/17/21									08/31/23
4731-1-04	Scope of Practice: Mechanotherapy	06/17/21								12/31/18	12/31/23
4731-1-05	Scope of Practice: Massage Therapy	06/17/21								11/05/19	11/05/24
4731-1-06	Scope of Practice: Naprapathy									08/31/18	08/31/23

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-1-07	<i>Eligibility of Electrologists Licensed by the Ohio State Board of Cosmetology to Obtain Licensure as Cosmetic Therapists Pursuant to Chapter 4731 ORC and Subsequent Limitations</i>	06/17/21								12/31/18	12/31/23
4731-1-08	<i>Continuing Cosmetic Therapy Education Requirements for Registration or Reinstatement of a License to Practice Cosmetic Therapy</i>	06/17/21								09/30/19	09/30/24
4731-1-09	<i>Cosmetic Therapy Curriculum Requirements</i>	06/17/21									08/31/23
4731-1-10	<i>Distance Education</i>	06/17/21								01/31/19	01/31/24
4731-1-11	<i>Application and Certification for certificate to practice cosmetic therapy</i>	06/17/21								03/30/20	03/30/25
4731-1-12	<i>Examination</i>									11/30/16	11/30/21
4731-1-15	<i>Determination of Standing of School, College or Institution</i>	06/17/21								12/31/18	12/31/23
4731-1-16	<i>Massage Therapy curriculum rule (Five year review)</i>	06/17/21								01/31/19	11/30/21
4731-1-17	<i>Instructional Staff</i>	06/17/21								05/31/19	05/31/24
4731-1-18	<i>Grounds for Suspension, Revocation or Denial of Certificate of Good Standing, Hearing Rights</i>	06/17/21								03/30/20	03/30/25
4731-1-19	<i>Probationary Status of a limited branch school</i>	06/17/21								03/30/20	03/30/25
4731-1-24	<i>Massage Therapy Continuing Education</i>	03/09/16		10/26/16	04/24/19	04/29/19	06/05/19				
4731-2-01	<i>Public Notice of Rules Procedure</i>									12/07/17	12/07/22
4731-4-01	<i>Criminal Records Checks - Definitions</i>									09/30/19	09/30/24
4731-4-02	<i>Criminal Records Checks</i>									09/30/19	09/30/24
4731-5-01	<i>Admission to Examinations</i>									06/09/17	06/09/22
4731-5-02	<i>Examination Failure; Inspection and Regrading</i>									06/09/17	06/09/22
4731-5-03	<i>Conduct During Examinations</i>									06/09/17	06/09/22
4731-5-04	<i>Termination of Examinations</i>									06/09/17	06/09/22
4731-6-01	<i>Medical or Osteopathic Licensure: Definitions</i>									07/31/19	07/31/24
4731-6-02	<i>Preliminary Education for Medical and Osteopathic Licensure</i>									07/31/19	07/31/24

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-6-04	Demonstration of proficiency in spoken English									06/09/17	06/09/22
4731-6-05	Format of Medical and Osteopathic Examination		09/08/21	09/24/21	10/27/21	10/29/21	12/03/21			07/31/19	07/31/24
4731-6-14	Examination for physician licensure	09/03/20								07/31/19	07/31/24
4731-6-15	Eligibility for Licensure of National Board Diplomats and Medical Council of Canada Licentiates									07/31/19	07/31/24
4731-6-21	Application Procedures for Certificate Issuance; Investigation; Notice of Hearing Rights									07/31/19	07/31/24
4731-6-22	Abandonment and Withdrawal of Medical and Osteopathic Licensure Applications									07/31/19	07/31/24
4731-6-30	Training Certificates									07/31/19	07/31/24
4731-6-31	Limited Preexamination Registration and Limited Certification									07/31/19	07/31/24
4731-6-33	Special Activity Certificates									07/31/19	07/31/24
4731-6-34	Volunteer's Certificates									07/31/19	07/31/24
4731-7-01	Method of Notice of Meetings									07/31/19	07/31/24
4731-8-01	Personal Information Systems	04/29/20		10/05/20	11/18/20	02/11/21			no change	02/11/21	02/11/26
4731-8-02	Definitions	04/29/20		10/05/20	11/18/20	02/11/21			no change	02/11/21	02/11/26
4731-8-03	Procedures for accessing confidential personal information	04/29/20		10/05/20	11/18/20	02/11/21			no change	02/11/21	02/11/26
4731-8-04	Valid reasons for accessing confidential personal information	04/29/20		10/05/20	11/18/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-8-05	Confidentiality Statutes	04/29/20		10/05/20	11/18/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-8-06	Restricting & Logging access to confidential personal information	04/29/20		10/05/20	11/18/20	02/11/21			no change	02/11/21	02/11/26
4731-9-01	Record of Board Meetings; Recording, Filming, and Photographing of Meetings									09/15/19	06/17/24
4731-10-01	Definitions	10/25/19		05/26/20			Revised filing 11/3/20			05/31/21	05/31/26

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-10-02	Requisite Hours of Continuing Medical Education for License Renewal or Reinstatement	10/25/19		05/26/20		Revised filing 11/3/20 10/30/20	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-10-03	CME Waiver	10/25/19		05/26/20		Revised filings 11/24 & 11/3 - orig 10/30/20	12/04/20	12/07/20	05/12/21	05/31/21	05/31/26
4731-10-04	Continuing Medical Education Requirements for Restoration of a License	10/25/19		05/26/20		Revised filings 11/24 & 11/3 - orig 10/30/20	12/04/20	12/07/20	05/12/21	05/31/21	05/31/26
4371-10-08	Evidence of Continuing Medical Education	10/25/19		05/26/20		Revised filings 11/24 & 11/3 - orig 10/30/20	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-11-01	Controlled substances; General Provisions Definitions				11/14/19	corrected- 7/16/20 6/18/2020	07/23/20	08/17/20	10/14/20	10/31/20	10/31/25
4731-11-02	Controlled Substances - General Provisions	07/26/19	11/13/19	10/05/20		05/27/21			no change		05/27/26
4731-11-03	Schedule II Controlled Substance Stimulants	07/26/19	11/13/19	10/05/20						12/31/15	12/31/20
4731-11-04	Controlled Substances: Utilization for Weight Reduction	07/26/19	11/13/19	10/05/20						02/29/16	02/28/21
4731-11-04.1	Controlled substances: Utilization for chronic weight management	07/26/19	11/13/19	10/05/20						12/31/15	12/31/20
4731-11-07	Research Utilizing Controlled Substances	07/26/19	11/13/19	10/05/20		05/27/21			no change		05/27/26
4731-11-08	Utilizing Controlled Substances for Self and Family Members	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21			no change		05/27/26

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-11-09	Prescribing to persons the physician has never personally examined.									03/23/17	03/23/22
4731-11-11	Standards and procedures for review of "Ohio Automated Rx Reporting System" (OARRS).	07/26/19	11/13/19	10/05/20		05/27/21	06/28/21		09/08/21	09/30/21	09/30/26
4731-11-13	Prescribing of Opioid Analgesics for Acute Pain									08/31/17	08/31/22
4731-11-14	Prescribing for subacute and chronic pain			3/21/19	11/14/19	6/18/2020	07/23/20	08/17/20	10/14/20	10/31/20	12/23/23
4731-12-01	Preliminary Education for Licensure in Podiatric Medicine and Surgery									06/30/17	06/30/22
4731-12-02	Standing of Colleges of Podiatric Surgery and Medicine									06/30/17	06/30/22
4731-12-03	Eligibility for the Examination in Podiatric Surgery and Medicine (see note below)									04/19/17	04/19/22
4731-12-04	Eligibility of Licensure in Podiatric Medicine and Surgery by Endorsement from Another State									06/30/17	06/30/22
4731-12-05	Application Procedures for Licensure in Podiatric Medicine and Surgery, Investigation, Notice of Hearing Rights.									06/30/17	06/30/22
4731-12-06	Visiting Podiatric Faculty Certificates									06/30/17	06/30/22
4731-12-07	Podiatric Training Certificates									06/30/17	06/30/22
4731-13-01	Conduct of Hearings - Representative; Appearances	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-02	Filing Request for Hearing	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	No change				04/12/26
4731-13-03	Authority and Duties of Hearing Examiners	08/26/20	10/14/20	amended filing 1/6/21 10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-04	Consolidation	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-05	Intervention	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-06	Continuance of Hearing	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-13-07	Motions	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-07.1	Form and page limitations for briefs and memoranda	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-08	Filing	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-09	Service	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-10	Computation and Extension of Time	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-11	Notice of Hearings	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-12	Transcripts	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-13	Subpoenas for Purposes of Hearing	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-14	Mileage Reimbursement and Witness Fees	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-15	Reports and Recommendations	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-16	Reinstatement or Restoration of Certificate	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-17	Settlements, Dismissals, and Voluntary Surrenders	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-18	Exchange of Documents and Witness Lists	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-20	Depositions in Lieu of Live Testimony and Transcripts in place of Prior Testimony	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-20.1	Electronic Testimony	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-21	Prior Action by the State Medical Board	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-22	Stipulation of Facts	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-23	Witnesses	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-24	Conviction of a Crime	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-25	Evidence	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-26	Broadcasting and Photographing Administrative Hearings	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26

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4731-13-27	Sexual Misconduct Evidence	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-28	Supervision of Hearing Examiners	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-30	Prehearing Conference	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-31	Transcripts of Prior Testimony	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-32	Prior Statements of the Respondent	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-33	Physician's Desk Physician	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-13-34	Ex Parte Communication	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-35	Severability	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	no change				04/12/26
4731-13-36	Disciplinary Actions	08/26/20	10/14/20	10/23/20	04/02/21	04/12/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4731-14-01	Pronouncement of Death	01/25/21	03/10/21	03/18/21		05/27/21	06/28/21		09/08/21	09/30/21	09/30/26
4731-15-01	Licensee Reporting Requirement; Exceptions									11/17/17	11/17/22
4731-15-02	Healthcare Facility Reporting Requirement									11/17/17	11/17/22
4731-15-03	Malpractice Reporting Requirement									11/17/17	11/17/22
4731-15-04	Professional Society Reporting									11/17/17	11/17/22
4731-15-05	Liability; Reporting Forms; Confidentiality and Disclosure									11/17/17	11/17/22
4731-16-01	Rules governing impaired physicians and approval of treatments programs - Definitions									11/17/17	11/17/22
4731-16-02	General Procedures in Impairment Cases	06/17/21	09/08/21	09/24/21	10/27/21	10/29/21	12/03/21			11/17/17	11/17/22
4731-16-04	Other Violations									11/17/17	11/17/22
4731-16-05	Examinations	06/17/21	09/08/21	09/24/21	10/27/21	10/29/21	12/03/21			11/17/17	11/17/22
4731-16-06	Consent Agreements and Orders for Reinstatement of Impaired Practitioners									11/17/17	11/17/22
4731-16-07	Treatment Provider Program Obligations									11/17/17	11/17/22
4731-16-08	Criteria for Approval	06/17/21	09/08/21	09/24/21	10/27/21	10/29/21	12/03/21			11/17/17	11/17/22
4731-16-09	Procedures for Approval									11/17/17	11/17/22

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4731-16-10	Aftercare Contracts									11/17/17	11/17/22
4731-16-11	Revocation, Suspension, or Denial of Certificate of Good Standing									11/17/17	11/17/22
4731-16-12	Out-of-State Impairment Cases									11/17/17	11/17/22
4731-16-13	Patient Consent; Revocation of Consent									11/17/17	11/17/22
4731-16-14	Caffeine, Nicotine, and Over-The Counter Drugs									11/17/17	11/17/22
4731-16-15	Patient Rights									11/17/17	11/17/22
4731-16-17	Requirements for the one-bite program									01/31/19	01/31/24
4731-16-18	Eligibility for the one-bite program									01/31/19	01/31/24
4731-16-19	Monitoring organization for one-bite program									01/31/19	01/31/24
4731-16-20	Treatment providers in the one-bite program									01/31/19	01/31/24
4731-16-21	Continuing care for the one-bite program									01/31/19	01/31/24
4731-17-01	Exposure-Prone Invasive Procedure Precautions - Definitions	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-17-02	Universal Precautions	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21			no change		02/11/26
4731-17-03	Hand Washing	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21			no change		02/11/26
4731-17-04	Disinfection and Sterilization	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-17-05	Handling and Disposal of Sharps and Wastes	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-17-06	Barrier Techniques	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21			no change		02/11/26
4731-17-07	Violations	08/26/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4731-18-01	Definitions	01/10/18	01/20/20	05/12/20	04/05/21	04/09/21	refiled 6-9-21 5/17/2021	06/25/21	07/14/21	07/31/21	07/31/26
4731-18-02	Use of Light Based Medical Devices	01/10/18	01/20/20	05/12/20	04/05/21	04/09/21	refiled 6-9-21 5/17/2021	06/25/21	07/14/21	07/31/21	07/31/26

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-18-03	Delegation of the Use of Light Based Medical Devices	01/10/18	01/20/20	05/12/20	04/05/21	04/09/21	refiled 6-9-21 5/17/2021	06/25/21	07/14/21	07/31/21	07/31/26
4731-18-04	Delegation of phototherapy and photodynamic therapy	01/10/18	01/20/20	05/12/20	04/05/21	04/09/21	refiled 6-9-21 5/17/2021	06/25/21	07/14/21	07/31/21	07/31/26
4731-20-01	Surgery Privileges of Podiatrist - Definition of Foot									05/31/18	05/31/23
4731-20-02	Surgery: Ankle Joint									05/31/18	05/31/23
4731-22-01	Emeritus Registration - Definitions									08/31/17	08/31/22
4731-22-02	Application									08/31/17	08/31/22
4731-22-03	Status of Registrant									05/12/17	05/12/22
4731-22-04	Continuing Education Requirements									05/12/17	05/12/22
4731-22-06	Renewal of Cycle of Fees									05/12/17	05/12/22
4731-22-07	Change to Active Status	06/17/21	09/08/21	09/24/21	10/27/21	10/29/21	12/03/21			08/31/17	08/31/22
4731-22-08	Cancellation of or Refusal to Issue an Emeritus Registration									05/12/17	05/12/22
4731-23-01	Delegation of Medical Tasks - Definitions	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21		no change			05/27/26
4731-23-02	Delegation of Medical Tasks	01/25/21	03/10/21	03/18/21	04/23/21	refiled 5/27/2021	06/28/21		09/08/21	09/30/21	09/30/26
4731-23-03	Delegation of Medical Tasks: Prohibitions	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21		no change			05/27/26
4731-23-04	Violations	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21		no change			05/27/26
4731-24-01	Anesthesiologist Assistants - Definitions									07/31/19	07/31/24
4731-24-02	Anesthesiologist Assistants; Supervision									07/31/19	07/31/24
4731-24-03	Anesthesiologist Assistants; Enhanced Supervision									07/31/19	07/31/24
4731-25-01	Office-Based Surgery - Definition of Terms										03/01/23
4731-25-02	General Provisions									05/31/18	05/31/23

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-25-03	Standards for Surgery Using Moderate Sedation/Analgesia									05/31/18	08/31/23
4731-25-04	Standards for Surgery Using Anesthesia Services									05/31/18	05/31/23
4731-25-05	Liposuction in the Office Setting									03/01/18	03/01/23
4731-25-07	Accreditation of Office Settings									05/31/18	05/31/23
4731-25-08	Standards for Surgery									09/30/19	09/30/24
						refiled 7/14/21					
4731-26-01	Sexual Misconduct - Definitions	01/25/21	03/10/21	03/18/21	04/23/21	5/27/2021	06/28/21		09/08/21	09/30/21	09/30/26
4731-26-02	Prohibitions	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21	06/28/21		09/08/21	09/30/21	09/30/26
4731-26-03	Violations; Miscellaneous	01/25/21	03/10/21	03/18/21	04/23/21	05/27/21	06/28/21		09/08/21	09/30/21	09/30/26
4731-27-01	Definitions									02/04/19	02/02/24
4731-27-02	Dismissing a patient from the medical practice									05/31/19	05/31/24
4731-27-03	Notice of termination of physician employment or physician leaving a practice, selling a practice, or retiring from the practice of medicine									05/31/19	05/31/24
4731-28-01	Mental or Physical Impairment									08/31/17	08/31/22
4731-28-02	Eligibility for confidential monitoring program									08/31/18	08/31/23
4731-28-03	Participation in the confidential monitoring program									08/31/18	08/31/23
4731-28-04	Disqualification from continued participation in the confidential monitoring program									08/31/18	08/31/23
4731-28-05	Termination of the participation agreement for the confidential monitoring program									08/31/18	08/31/23
4731-29-01	Standards and procedures for operation of a pain management clinic.									06/30/17	06/30/22
4731-30-01	Internal Management Definitions									09/23/18	09/23/23
4731-30-02	Internal Management Board Metrics	07/26/19								09/23/18	09/23/23
4731-30-03	Approval of Licensure Applications	06/17/21				refiled 11-4-21 5/7/2020				10/17/19	10/17/24

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-38-01	Licenses Issued or Renewed Under the Interstate Medical Licensure Compact										
4759-2-01	Definitions									11/30/19	11/30/24
4759-4-01	Applications									11/30/19	11/30/24
4759-4-02	Preprofessional experience										08/28/24
4759-4-03	Examination									11/30/19	11/30/24
4759-4-04	Continuing Education	08/27/19		11/10/20	04/02/21	04/09/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4759-4-08	Limited permit	8/27/19 4/19/18	07/11/18	11/10/20	04/02/21	04/09/21	05/17/21	06/07/21	07/14/21	07/31/21	07/31/26
4759-4-09	License certificates and permits	04/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-5-01	Supervision of persons claiming exemption									08/28/19	08/28/24
4759-5-02	Student practice exemption									11/30/19	11/30/24
4759-5-03	Plan of treatment exemption									11/30/19	11/30/24
4759-5-04	Additional nutritional activities exemption										07/01/24
4759-5-05	Distribution of literature exemption										07/01/24
4759-5-06	Weight control program exemption										07/01/24
4759-6-01	Standards of practice innutrition care									11/30/19	11/30/24
4759-6-02	Standards of professional performance	04/19/18	07/11/18	11/10/20	04/02/21	4/9/2021 refiled 6/9/21	05/17/21	06/25/21	07/14/21	07/31/21	07/31/26
4759-6-03	Interpretation of standards									11/30/19	11/30/24
4759-9-01	Severability									11/30/19	11/30/24
4759-11-01	Miscellaneous Provisions									11/30/19	11/30/24
4761-2-03	Board Records									02/28/19	02/28/24
4761-3-01	Definition of terms									02/28/19	02/28/24
4761-4-01	Approval of educational programs									02/28/19	02/28/24
4761-4-02	Monitoring of Ohio respiratory care educational programs									02/28/19	02/28/24
4761-5-01	Waiver of licensing requirements pursuant to division (B) of section 4761.04 or the Revised Code	04/23/19	06/12/19	11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/25
4761-5-02	Admission to the Ohio credentialing examination	04/23/19	06/12/19	11/06/19	01/10/20	06/19/20	No change rule			09/19/20	06/19/25
4761-5-04	License application procedure	04/23/19	06/12/19	11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/25

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4761-5-06	Respiratory care practice by polysomnographic technologists	04/23/19	06/12/19	11/06/19	01/10/20	06/18/20	No change rule			09/18/20	06/18/25
4761-6-01	Limited permit application procedure	04/23/19	06/12/19	11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	02/28/24
4761-7-01	Original license or permit, identification card or electronic license verification									02/28/19	02/28/24
4761-7-03	Scope of respiratory care defined										11/15/23
4761-7-04	Supervision			11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/25
4761-7-05	Administration of medicines										11/15/23
4761-8-01	Renewal of license or permits	03/22/19	06/12/19	12/05/19	09/11/20	09/25/20	10/27/20	11/16/20	12/09/20	12/31/20	12/31/25
4761-9-01	Definition of respiratory care continuing education			11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	02/28/24
4761-9-02	General RCCE requirements and reporting mechanism	03/22/19	06/12/19	12/05/19	09/11/20	09/25/20	10/27/20	11/16/20	12/09/20	12/31/20	12/31/25
4761-9-03	Activities which do not meet the Ohio RCCE requirements									02/28/19	02/28/24
4761-9-04	Ohio respiratory care law and professional ethics course criteria			11/06/19	01/10/20	Refiled 8/24/20 6/18/2020	9/24/20 7/23/2020	08/17/20	11/10/20		02/28/24
4761-9-05	Approved sources of RCCE			11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	02/28/24
4761-9-07	Auditing for compliance with RCCE requirements			11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/25
4761-10-01	Ethical and professional conduct									02/28/19	02/28/24
4761-10-02	Proper use of credentials										11/15/23
4761-10-03	Providing information to the Board	04/23/19	06/12/19	11/06/19	01/10/20	06/18/20	07/23/20	08/17/20	09/09/20	09/30/20	09/30/25
4761-15-01	Miscellaneous Provisions									02/28/19	02/28/24
4774-1-01	Definitions	04/29/20	10/14/20	10/23/20	11/24/20	02/11/21			no change	02/11/21	02/11/26
4774-1-02	Application for Certificate to Practice	04/29/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4774-1-03	Renewal of Certificate to Practice	04/29/20	10/14/20	10/23/20	11/24/20	02/11/21	03/15/21	03/29/21	05/12/21	05/31/21	05/31/26
4774-1-04	Miscellaneous Provisions	04/29/20	10/14/20	10/23/20	11/24/20	02/11/21			no change	02/11/21	02/11/26
4778-1-01	Definition									01/29/19	01/24/24
4778-1-02	Application									04/30/19	04/30/24
4778-1-03	Special Activity License									01/24/19	01/24/24

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4778-1-05	Collaboration Agreement									04/30/19	04/30/24
4778-1-06	Miscellaneous Provisions									04/30/19	04/30/24



MEMORANDUM

TO: Betty Montgomery, President
Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: IMLC Rule-Approval to file with CSI

DATE: December 20, 2021

Proposed rule 4731-38-01 which clarifies the term, fees, and other requirements for Ohio licenses issued through the Interstate Medical Licensure Compact was circulated to interested parties with comments due by December 1, 2021. No comments were received.

Proposed Action: Approve filing the proposed rule regarding the Interstate Medical Licensure Compact with the Common Sense Initiative.

*** DRAFT - NOT YET FILED ***

4731-38-01

Licenses Issued or Renewed Under the Interstate Medical Licensure Compact.

- (A) "IMLC" means the Interstate Medical Licensure Compact
- (B) "IMLCC" means the Interstate Medical Licensure Compact Commission
- (C) An individual applying for a license through the IMLC, shall pay directly to the IMLCC the application fee in the amount described in Section 4731.09 of the Revised Code, and any additional fees required by the IMLCC.
- (D) A license issued by the board through the IMLC shall be valid for two years, unless suspended or revoked.
- (E) An individual renewing a license issued through the IMLC shall pay directly to the IMLCC the biennial renewal fee, reinstatement fee, or restoration fee, as applicable, in the amount described in Section 4731.281 of the Revised Code , and any additional fees required by the IMLCC.
- (F) An individual renewing a license issued through the IMLC shall provide to the board, in the manner determined by the board, the information described in Section 4731.281 of the Revised Code.



MEMORANDUM

TO: Betty Montgomery, President
Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Rules for Adoption,

DATE: December 21, 2021

This memo proposes adoption and amendment for rules as listed below.

The public hearing was held on December 3, 2021. Two comments were received. The rules were considered at the JCARR meeting on December 6, 2021 and no comments were received. JCARR jurisdiction ends on January 2, 2022

4731-6-05	Medical and osteopathic examination	Proposed to Rescind
4731-6-05	Medical and osteopathic examination	Proposed New Rule
4731-16-02	General procedures in impairment cases	Proposed to Amend
4731-16-05	Examinations	Proposed to Amend
4731-16-08	Criteria for approval	Proposed to Amend
4731-22-07	Change to active status	Proposed to Amend
4731-36-01	Military provisions related to Education and experience requirements For licensure	Proposed to Amend

The Hearing Examiner's report, materials and transcript are provided to you.

Requested motion: I move to adopt and amend the rules as described in this memorandum from Ms. Anderson and to assign each rule action the effective date of January 31, 2022.

4731-6-05

Medical and osteopathic examination.

(A) The medical and osteopathic examinations shall be all steps of the USMLE or all levels of the COMLEX-USA.

(B) An applicant shall have passed all steps of the USMLE or all levels of the COMLEX-USA within a ten-year period, and achieved a recognized passing performance on each step or level. No applicant may have exceeded the maximum number of attempts for any step or level established by the national board of medical examiners or the national board of osteopathic medical examiners, as effective on the date of application for a license.

(C) The board may waive the requirements of paragraph (B) of this rule, if the applicant meets one or more of the following, as applicable:

(1) Holds current specialty board certification from a member board of the American board of medical specialties or the AOA; or

(2) Demonstrates that a step or level was completed within the maximum number of attempts permitted by the national board of medical examiners or the national board of osteopathic medical examiners, at the time the step or level was successfully completed, provided that the applicant did not exceed six attempts for the step or level.

(3) Demonstrates good cause, as determined by the board, for not having passed all steps or levels with a ten-year period.

(4) Steps or levels of the USMLE and COMLEX-USA cannot be combined to fulfill an acceptable testing sequence as required by this rule.

Replaces: 4731-6-05

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 4731.09, 4731.14, 4731.294
Prior Effective Dates: 02/29/1988 (Emer.), 06/06/1988 (Emer.), 11/01/1988
(Emer.), 12/19/1988, 02/10/1989, 08/15/1993,
06/23/1997, 12/01/1999, 10/31/2004, 12/31/2004,
06/30/2005, 04/30/2009, 10/31/2013, 08/31/2017,
07/31/2019

TO BE RESCINDED

4731-6-05

Medical and osteopathic examination.

- (A) The medical and osteopathic examinations shall be all steps of the USMLE or all levels of the COMLEX-USA.
- (B) An applicant shall have passed all steps of the USMLE or all levels of the COMLEX-USA within a ten-year period, and achieved a recognized passing performance on each step or level. No applicant shall have failed any step or level more than five times.
- (C) The board may grant a good cause waiver to any applicant that does not meet the requirements of paragraph (B) of this rule, if the applicant meets the following:
 - (1) Holds current specialty board certification from a member board of the American board of medical specialties or the AOA; or
 - (2) Demonstrates good cause, as determined by the board, for not having passed all three steps or levels within the ten year period, and otherwise meets the requirements set forth in paragraph (B) of this rule.
- (D) Steps or levels of the USMLE and COMLEX-USA cannot be combined to fulfill an acceptable testing sequence as required by this rule.

Effective:

Five Year Review (FYR) Dates: 10/29/2021

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	4731.05
Rule Amplifies:	4731.09, 4731.14, 4731.294
Prior Effective Dates:	02/29/1988 (Emer.), 06/06/1988 (Emer.), 11/01/1988 (Emer.), 12/19/1988, 02/10/1989, 08/15/1993, 06/23/1997, 12/01/1999, 10/31/2004, 12/31/2004, 06/30/2005, 04/30/2009, 10/31/2013, 08/31/2017, 07/31/2019



ELECTRONIC RULE-FILING SYSTEM

The Honorable Frank LaRose
Secretary of State
180 E. Broad St., 16th Floor
Columbus, OH 43215

Wendy Zhan, Director
Legislative Service Commission
77 South High St., 9th Floor
Columbus, OH 43215

Larry Wolpert, Director
Joint Committee on Agency Rule Review
77 South High St., Concourse Level
Columbus, OH 43215

It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191253

File Date and Time: 10/29/2021 2:24 PM

Confirmation Number: 841635ed4d981b9a413ea56bc36821e

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-6-05	Rescission	Y	Y	01/02/2022			Medical and osteopathic examination.
4731-6-05	New	N	Y	01/02/2022			Medical and osteopathic examination.

4731-16-02

General procedures in impairment cases.

(A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of 4778.14 of the Revised Code, it may compel the individual to submit to a mental or physical examination, or both.

- (1) Such examinations shall be undertaken by an approved treatment provider designated by the board.
- (2) The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired.
- (3) Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.

(B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, the following general pattern of action shall be followed:

- (1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.
 - (a) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code unless

other investigation produces reliable, substantial, and probative evidence demonstrating impairment.

- (b) If the examination or examinations disclose impairment, or if the board has other reliable, substantial and probative evidence demonstrating impairment, the board shall initiate proceedings to suspend the license or deny the applicant. The board may issue an order of summary suspension as provided in division (G) of section 4730.25 of the Revised Code, division (G) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (G) of section 4760.13 of the Revised Code, ~~or division (G) of section 4761.09 of the Revised Code~~, division (G) of section 4762.13 of the Revised Code, division (G) of section 4774.13 of the Revised Code, or division (G) of section 4778.14 of the Revised Code.
- (2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:
 - (a) The individual has relapsed during or following treatment;
 - (b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program;
 - (c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance.
- (3) Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's licensee certificate. Such demonstrations shall include but shall not be limited to the following:
 - (a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed all required treatment, as follows:
 - (i) Except as provided in paragraph (B)(3)(a)(ii) of this rule, the required treatment shall include inpatient or residential treatment that extends a minimum of twenty-eight days with the following

exception: If the individual has previously completed an inpatient or residential treatment program of at least twenty-eight days and maintained sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.

- (ii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who does not meet the criteria set forth in paragraph (B)(3)(a)(iii) of this rule, the required treatment shall include intensive outpatient treatment meeting the requirements of paragraph (A)(13) of rule 4731-16-08 of the Administrative Code. The required intensive outpatient treatment must include a minimum of twenty treatment sessions over no less than five consecutive weeks with the following exception: If the massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist has previously completed an intensive outpatient treatment program of at least twenty treatment sessions over no less than five consecutive weeks and has maintained sobriety for at least one year following completion of that intensive outpatient treatment, the treatment required shall be determined by the treatment provider.
- (iii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application for or while holding any licenseecertificate issued by the board other than a licenseecertificate to practice massage therapy, dietetics, respiratory care, as a radiologist assistant, or as a genetic counselor or cosmetic therapy, the required treatment shall be in compliance with paragraph (B)(3)(a)(i) of this rule.

(b) Evidence of continuing full compliance with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and with any consent agreement or order of the board then in effect;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for this determination. A physician who is the medical director of a treatment provider approved

under section 4731.25 of the Revised Code and this chapter of the Administrative Code may perform such an assessment without prior board approval.

- (4) Subject to the provisions of paragraph (D) of this rule, the board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(-3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or after the board has issued a final order in lieu of a consent agreement.
- (5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission by the individual to the board, for at least two years, of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.

(C) In cases where the board has initiated a disciplinary action for violations of any provisions of Chapter 4731., Chapter 4730., Chapter 4759., Chapter 4760., Chapter 4761., ~~or~~ Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code or any of its rules in addition to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 or the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code, the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:

- (1) If the board permanently revokes a license, the individual shall not be eligible for further consideration for licensure or license reinstatement;
- (2) If the board imposes a period of ineligibility for licensure, the individual shall not be eligible for licensure or license reinstatement until the period of ineligibility has lapsed;
- (3) If the board imposes an indefinite period of ineligibility, licensure or license reinstatement shall depend upon successful completion of the requirements in paragraphs (B)(-3) and (B)(4) of this rule and determination by the board that the period of suspension or ineligibility served is commensurate with the violations found.

(D) Except as provided in this paragraph, an individual who has relapsed during or following treatment shall be ineligible to apply for reinstatement for at least ninety days following the date of license suspension for a first relapse, for at least one year following the date of license suspension for a second relapse, and for at least three years following the date of license suspension for a third relapse. An individual who suffers a relapse, as that term is defined in paragraph (B) of rule 4731-16-01 of the Administrative Code, will not be subjected to suspension or other board discipline based on that relapse if all of the following conditions are met:

- (1) The relapse was the first ever suffered by the individual;
- (2) The relapse occurred under circumstances that the board finds minimized the probability that the individual would either provide patient care while under influence of alcohol or drugs or leave patients without necessary care while under the influence of alcohol or drugs;
- (3) The relapse involved a single occasion of use for less than one day;
- (4) The individual self-reported the relapse within forty-eight hours in accordance with rule 4731-15-01 of the Administrative Code;
- (5) The individual does not thereafter suffer another relapse;
- (6) The board does not obtain evidence of acts, conduct or omissions that would support the imposition of discipline, apart from the relapse itself;
- (7) The relapse does not lead to the individual being charged with any criminal offense;
- (8) The individual reported the relapse to an approved treatment provider within forty-eight hours, submitted to evaluation as requested by the approved treatment provider, and obtained any additional treatment recommended;
- (9) The individual suspended practice until the approved treatment provider reported in writing to the board that it had made a clear determination that the individual was capable of practicing according to acceptable and prevailing standards of care; and
- (10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are not circumstances warranting the initiation of disciplinary action.

Effective:

Five Year Review (FYR) Dates: 11/17/2022

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03,
4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25,
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Prior Effective Dates: 12/01/1991, 09/01/1999, 11/30/2002, 06/30/2007,
01/31/2009

4731-16-05

Examinations.

(A) Any examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code in order to determine impairment, or any examination of an applicant for or a holder of a certificate issued under Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760. Chapter 4761., or Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code performed by an approved treatment provider shall include all of the following:

- (1) Urine, hair screening or blood toxicology alcohol testing, or any combination both, with legal chain of custody and forensic capability protocol;
- (2) Comprehensive evaluation pertinent to the reasons for referral, including:
 - (a) Complete medical history and physical examination;
 - (b) Routine laboratory tests, to include complete blood count and liver function studies;
 - (c) Psychiatric evaluation, except as in paragraph (A)(3)(b)(ii); and mental status examination;
 - (d) Comprehensive biopsychosocial assessment; chemical use history; and
 - (e) Corroborating interviews of at least two persons who are close to the individual;
 - (f) Administration of at least two clinically approved substance use disorder assessment tools; and
- (3) One of the following assessment standards, as applicable:
 - (a) Except as provided in paragraph (A)(3)(b) of this rule, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.
 - (b) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic

~~therapist~~ who does not meet the criteria set forth in paragraph (A)(3)(c) of this rule:

- (i) ~~In depth Outpatient assessment that meets the requirements of (A)(1) and (2), including use of a structured interview, by a physician, registered nurse or nurse practitioner who has specialized training in addiction medicine or treatment of addiction, or by a licensed independent chemical dependency counselor or licensed chemical dependency counselor III;~~
- (ii) ~~Routine laboratory tests, to include complete blood count and liver function studies;~~
- (iii) ~~Corroborating interviews of at least two persons who are close to the individual;~~
- (iv) ~~Administration of the "Beck Depression Inventory" and the "Hamilton Anxiety Survey;" and~~
- (v) Any other requirements as identified by the board or treatment provider. Psychiatric evaluation is not required in an examination administered under this paragraph unless the need for such an evaluation is identified by the board or the treatment provider.

(c) If the individual is a ~~massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist~~ who was investigated by the board for possible impairment as part of a previous application for or while holding any certificate issued by the board, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.

(B) A diagnosis made by an approved treatment provider based on an examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, ~~division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4778.14 of the Revised Code~~ shall be made solely for the purpose of providing evidence for use by the board. A licensee or applicant who undergoes an examination ordered by the board but who refuses to authorize the treatment provider to release reports or information to the board shall be deemed to

have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence as provided in division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, ~~or division (F) of section 4761.09 of the Revised Code~~, division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code.

- (C) The report issued pursuant to an examination ordered by the board shall be submitted to the board within five days following completion of the examination.
- (D) The board may require the certificate holder or applicant to submit to a drug toxicology screen at the time it serves its order to submit to an examination or at any time after it issues the examination order and before the examination is completed.
 - (1) The drug toxicology screen shall be considered part of the examination.
 - (2) Refusal to submit to the drug toxicology screen immediately upon such request shall constitute failure to submit to a mental or physical examination ordered by the board and shall constitute an admission of the allegations against the individual, unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.
- (E) An individual ordered by the board to an examination who refuses to authorize the treatment provider to contact any person identified by the treatment provider as being appropriate for the purpose of conducting a corroborating interview as part of the examination shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered into without the taking of testimony or presentation of evidence.

Effective:

Five Year Review (FYR) Dates: 11/17/2022

Certification

Date

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Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03,
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Prior Effective Dates: 10/31/1995, 09/01/1999, 11/30/2002, 06/30/2007,
01/31/2009, 04/30/2009

4731-16-08

Criteria for approval.

(A) Criteria for approval of treatment providers shall include all of the following:

- (1) The philosophy and individualized treatment plan of the program is based on the disease concept.
- (2) The chemical dependency model of treatment is based on a twelve-step program such as alcoholics anonymous.
- (3) The program provides specialized medical and nursing care during detoxification and appropriate health care professionals during treatment phase.
- (4) The evaluation process is an objective, measurable program which uses tools and testing procedures to identify patterns, progression, and stages of recovery at appropriate times in the treatment program. The evaluation shall also emphasize patient self-assessment.
- (5) The treatment provider has a network of referral agencies or professionals which meets the needs of the practitioner and significant others in the event that the needs go beyond the program's expertise or available facilities.
- (6) The treatment provider has a variety of treatment plan options including inpatient detoxification treatment, inpatient or residential treatment, and outpatient services.
- (7) The involvement and treatment of family and significant others is provided.
- (8) The provider gives each patient who has been diagnosed as in need of treatment a written list of approved treatment providers from whom indicated inpatient or residential treatment, outpatient treatment, or aftercare can be obtained.
- (9) The provider holds certification as an alcoholism program or drug treatment program by the Ohio department of alcohol and drug addiction services, or if located outside Ohio, holds appropriate certification or registration with an agency exercising a similar function in the state in which it is located.
- (10) The provider provides advocacy services only at no cost to the patient, or provides such services only after obtaining the signature of the patient acknowledging that he or she has been notified:
 - (a) That advocacy is not treatment;
 - (b) That nothing in Chapter 4730., 4731., 4759., 4760., 4761., ~~or 4762.~~, 4774., or 4778. of the Revised Code or this chapter of the Administrative Code

requires a practitioner to obtain aftercare, monitoring or advocacy from the provider of inpatient or extended residential treatment or intensive outpatient treatment, as applicable; and

- (c) That the practitioner's refusal to obtain aftercare, monitoring, or advocacy services from the provider of inpatient treatment or intensive outpatient treatment, as applicable, shall not constitute grounds to report to the board so long as the practitioner demonstrates that the practitioner has contracted with another approved treatment provider to receive any further recommended treatment.
- (11) The provider has the capability of making an initial examination to determine what type of treatment an impaired practitioner requires.
- (12) The provider requires that each patient who is subject to the jurisdiction of the board, who is determined to be impaired, except as provided in paragraph (A) (13) of this rule, complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The exceptions in paragraph (C) of this rule notwithstanding, the provider must personally provide the required inpatient or residential treatment and the assessment or must confirm that another approved treatment provider has provided the inpatient or residential treatment and the assessment before providing any outpatient treatment or aftercare. The inpatient or residential treatment program must have a continuing inpatient or residential patient census sufficient to provide an appropriate treatment milieu for patients receiving treatment in the inpatient or residential setting. This paragraph shall not apply to a patient who has previously completed an inpatient or residential treatment program of at least twenty-eight days if the patient was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment.
- (13) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who is determined to be impaired and who does not meet the criteria set forth in paragraph (A)(14) of this rule, complete a minimum of twenty treatment sessions over no less than five consecutive weeks of intensive outpatient treatment, after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The intensive outpatient treatment must include:

- (a) Witnessed toxicology screens with legal chain of custody and forensic capability performed weekly at therapy sessions;
- (b) At least three twelve-step meetings weekly;
- (c) All treatment sessions lasting a minimum of three hours, not including time spent watching videos or participating in twelve-step meetings;
- (d) Family education lasting at least two hours weekly.

(14) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application or while holding any certificate by the board other than a certificate to practice as a massage therapist, dietitian, respiratory care professional, radiologist assistant or genetic counselor or cosmetic therapist, complete the inpatient or residential treatment required in paragraph (A)(12) of this rule.

(15) If the provider did not hold approval under this chapter prior to January 1, 2001, the provider is accredited by the joint commission on accreditation of health care organizations or by CARF (~~eommision~~commission on accreditation of rehabilitation facilities.)

(B) A treatment provider which does not meet the criteria of paragraph (A)(1) or (A)(2) of this rule may nonetheless be considered for approval if it establishes by evidence acceptable to the board that its philosophy, individualized treatment plan, or model of treatment is based on current scientific advances in the field of chemical dependency, and that its success in treatment is comparable or superior to that obtained by treatment providers which meet all the criteria of paragraph (A) of this rule.

(C) A treatment provider that does not meet the criteria of paragraph (A)(3) or (A)(6) of this rule because it does not offer all phases of treatment may nonetheless be considered for approval if it meets both of the following requirements.

- (1) If it does not offer detoxification treatment, its policies and procedures are structured to assure that all patients who enter treatment have completed detoxification where detoxification is medically indicated.
- (2) If it does not offer one or more required treatment phases (e.g. - inpatient treatment, intensive outpatient treatment, or extended residential treatment), it has affiliation agreements or working relationships with other treatment providers to which patients can be referred for any necessary treatment it does not offer.

Effective:

Five Year Review (FYR) Dates: 11/17/2022

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03,
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Rule Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25,
4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
Prior Effective Dates: 12/01/1991, 09/01/1999, 11/30/2002, 06/30/2007,
01/31/2009



ELECTRONIC RULE-FILING SYSTEM

The Honorable Frank LaRose
Secretary of State
180 E. Broad St., 16th Floor
Columbus, OH 43215

Wendy Zhan, Director
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It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191254

File Date and Time: 10/29/2021 2:42 PM

Confirmation Number: 77fc9a8db5806ce142a393b92f6563b

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-16-02	Amendment	N	Y	01/02/2022			General procedures in impairment cases.
4731-16-05	Amendment	N	Y	01/02/2022			Examinations.
4731-16-08	Amendment	N	Y	01/02/2022			Criteria for approval.

4731-22-07

Change to active status.

(A) A registrant may apply to change to active status by completing the following:

- (1) If the application is received no more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a reinstatement application.
- (2) If the application is received more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a restoration application.

(B) The reinstatement or restoration application shall include all of the following.

- (1) Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.
- (2) Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code if the registrant is a physician or pursuant to section 4731.15 of the Revised Code if the registrant is a massage therapist ~~or cosmetic therapist~~.
- (3) Submission of any other information required by the board.

(C) In the event the holder of an emeritus certificate applies for restoration after two years from the date the registrant's Ohio license expired or if the registrant has not engaged in practice for more than two years, the board may require the applicant to demonstrate present fitness to practice pursuant to section 4731.222 of the Revised Code.

Effective:

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ELECTRONIC RULE-FILING SYSTEM

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Columbus, OH 43215

It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

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Confirmation Number: 79b172dc1862ae4c12d7c3bed78fbef0

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-22-07	Amendment	N	Y	01/02/2022			Change to active status.

4731-36-01

Military provisions related to education and experience requirements for licensure.**(A) Definitions**

For purposes of this chapter:

- (1) "Armed forces" means any of the following:
 - (a) The armed forces of the United States, including the army, navy, air force, marine corps, and coast guard;
 - (b) A reserve component of the armed forces listed in paragraph (A)(1)(a) of this rule;
 - (c) The national guard, including the Ohio national guard or the national guard of any other state;
 - (d) The commissioned corps of the United States public health service;
 - (e) The merchant marine service during wartime;
 - (f) Such other service as may be designated by Congress; or
 - (g) The Ohio organized militia when engaged in full-time national guard duty for a period of more than thirty days.
- (2) "Board" means the state medical board of Ohio.
- (3) "Service member" means any person who is serving in the armed forces.
- (4) "Veteran" means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces, who has been discharged under honorable conditions from the armed forces or who has been transferred to the reserve with evidence of satisfactory service.

(B) Education and service for eligibility for licensure.

- (1) In accordance with section 5903.03 of the Revised Code, the following military programs of training, military primary specialties, and lengths of service are substantially equivalent to or exceed the educational and experience requirements for licensure as a physician assistant and for a prescriber number:

- (a) An individual serving in a military primary specialty listed in paragraph (B) (1)(b) of this rule must be a graduate of a physician assistant education program approved by the accreditation review commission on education for the physician assistant.
- (b) Service in one of the following military primary specialties for at least two consecutive years while on active duty, with evidence of service under honorable conditions, including any experience attained while practicing as a physician assistant at a health care facility or clinic operated by the United States department of veterans affairs, may be substituted for a master's degree for eligibility for a license to practice as a physician assistant pursuant to section 4730.11 of the Revised Code and for a prescriber number pursuant to section 4730.15 of the Revised Code;
 - (i) Army: MOS 65D;
 - (ii) Navy: NOBC 0113;
 - (iii) Air force: AFSC 42G;
 - (iv) The national guard of Ohio or any state;
 - (v) Marine: Physician assistant services are provided by navy personnel;
 - (vi) Coast guard;
 - (vii) Public health service.
- (2) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a ~~cosmetic therapist~~ or massage therapist.
- (3) For purposes of section 5903.03 of the Revised Code, the board has determined that:
 - (a) A diploma from a military medical school or military osteopathic medical school that at the time the diploma was issued was a medical school accredited by the liaison committee on medical education or an osteopathic medical school accredited by the American osteopathic association are substantially equivalent to the medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery;

- (b) Military graduate medical education that is accredited by the accreditation council for graduate medical education is substantially equivalent to the graduate medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery; and
- (c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice medicine and surgery or osteopathic medicine and surgery.

(4) For purposes of section 5903.03 of the Revised Code, the board has determined that:

- (a) A degree from a military college of podiatric medicine and surgery that at the time the degree was granted was a college of podiatric medicine and surgery accredited by the council on podiatric medical education is substantially equivalent to the medical educational requirement for licensure to practice podiatric medicine and surgery;
- (b) Military postgraduate training in a podiatric internship, residency, or clinical fellowship program accredited by the council on podiatric medicine is substantially equivalent to the graduate medical educational requirement for licensure to practice podiatric medicine and surgery; and
- (c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice podiatric medicine and surgery.

(5) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a dietitian.

(6) For purposes of section 5903.03 of the Revised Code, the board recognizes respiratory care educational programs offered by branches of the United States military that have been issued provisional accreditation, initial accreditation, continuing accreditation or other accreditation status conferred by the commission on accreditation for respiratory care (CoARC) or their successor organization that permits respiratory care programs offered by the United States military to continue to enroll and/or graduate students

(7) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, and

lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as an acupuncturist ~~or oriental medicine practitioner~~.

- (8) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a radiologist assistant.
- (9) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a genetic counselor.

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Date

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12/31/2015, 04/30/2019, 07/31/2019, 11/30/2019,
12/31/2020



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Columbus, OH 43215

It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

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ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-36-01	Amendment	Y	Y	01/02/2022			Military provisions related to education and experience requirements for licensure.

STATE MEDICAL BOARD
OF OHIO

RECEIVED:
December 20, 2021

**SUMMARY OF THE DECEMBER 3, 2021 PUBLIC HEARING
REGARDING PROPOSED CHANGES TO THE OHIO ADMINISTRATIVE CODE**

Pursuant to Section 119.03, Ohio Revised Code, a public hearing was held on December 3, 2021, to hear comments concerning proposed changes to the administrative rules of the State Medical Board of Ohio (“Board”). R. Gregory Porter, Hearing Examiner, presided.

PURPOSE OF THE HEARING

The following changes are proposed:

Medical or Osteopathic License

Rule No.	Title	Proposed Action
4731-6-05	Medical and Osteopathic License	Rescind
4731-5-05	Medical and Osteopathic License	Adopt

Impaired Practitioners

Rule No.	Title	Proposed Action
4731-16-02	General Provisions in Impairment Cases	Amend
4731-16-05	Examinations	Amend
4731-16-08	Criteria for Approval	Amend

Emeritus Registration

Rule No.	Title	Proposed Action
4731-22-07	Change to Active Status	Amend

Military Provisions Related to Education and Experience Requirements for Licensure Applicable to Service Members, Veterans, and Spouses of Service Members and Veterans

Rule No.	Title	Proposed Action
4731-36-01	Military Provisions Related to Education and Experience for Licensure	Amend

PROCEDURAL MATTERS

1. The record was held open until 5:00 p.m. on December 3, 2021, for the purpose of receiving additional written comments concerning the proposed changes to the Ohio Administrative Code. No additional comments were received.

2. The hearing examiner marked Exhibits 1 through 7 post hearing.

TESTIMONY HEARD

Kimberly Anderson, Chief Legal Counsel for the Board

EXHIBITS EXAMINED

Exhibit 1: Copy of the rules originally filed in Package 191253 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021 and a copy of the confirmation of filing.

Exhibit 2: Copy of the rules originally filed in Package 191254 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021 and a copy of the confirmation of filing.

Exhibit 3: Copy of the rules originally filed in Package 191256 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021 and a copy of the confirmation of filing.

Exhibit 4: Copy of the rules originally filed in Package 191257 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021 and a copy of the confirmation of filing.

Exhibit 5: Copy of the Notice of Public Hearing for the rules in Packages 191253, 191254, 191256, and 191257 originally filed on October 29, 2021.

Exhibit 6: Copies of the address portion of e-mails sent to persons and organizations pursuant to their standing request to be notified when the Medical Board proposes rules.

Exhibit 7: Copies of the comments received from Sue Ciarlariello on behalf of the Ohio Society for Respiratory Care, and a technical question and comments from Kay Mavko on behalf of the Ohio Academy of Nutrition and Dietetics.

SUMMARY OF EVIDENCE

1. Kimberly Anderson, Chief Legal Counsel for the Board, identified Exhibits 1 through 7. She further testified with respect to the notice that the Board provided to the public and interested parties regarding the proposed rule changes, and with respect to other procedural matters. Ms. Anderson further testified that written comments were received by the Board

prior to the hearing concerning the proposed amended rules which are marked as Exhibit 7. (Hearing Transcript at 6-9)

2. Sue Ciarlariello, MBA, RRT-NPS, RCP, Legislative Chair of the Ohio Society for Respiratory Care (“OSRC”), provided the following written commentary on behalf of OSRC:

The Ohio Society for Respiratory Care (OSRC) fully supports the changes proposed in the above rules concerning the required mental or physical examinations and treatment in impairment cases. The OSRC appreciates the State Medical Board’s proposal to change the intensive examination and treatment requirements from inpatient to outpatient for licensed respiratory care professionals (RCPs). The cost of the previous inpatient assessment and residential treatment was causing some RCPs to surrender their licenses in lieu of treatment; the average income for an RCP is \$59,000 which is a livable wage, but not an income that could readily support over \$3000 for an inpatient assessment, especially when their work may be under suspension. We believe that the goal of this required program for impaired individuals is to provide treatment and rehabilitation, not to drive at-risk persons out of the workforce. Respiratory therapists are on the front line of this COVID pandemic and exposed to life and death situations regularly. Over the past year, long work hours, unmanageable workloads, and significant number of ventilator patient deaths in the ICU has contributed to staff burnout. We hope that our RCP licensees remain resilient, but if they succumb to addictive behaviors or poor judgment, we feel this is a safe, effective, and affordable outpatient alternative to get them the treatment they will need to return to their chosen professional occupation. Thank you for your support in this matter.

(Exhibit 7 at 1)

3. In an email to Board staff, Kay Mavko, MS, RDN, LD, State Regulatory Specialist for the Ohio Academy of Nutrition and Dietetics (“OAND”), inquired concerning a possible typographical error in proposed amended Rule 4731-16-02(B)(4) and (C)(3) where reference is made to a paragraph “(B)(-3).” (Exhibit 7 at 2)

Additionally, Ms. Mavko and Pat McKnight, MS, RDN, LD, Public Policy Committee Co-Chair for OAND, provided the following written commentary on behalf of OAND:

Thank you for the opportunity to review the rules being proposed for amendment by the State Medical Board of Ohio (SMBO) including:

- 4731-16-02 General procedures in impairment cases.
- 4731-16-05 Examinations.
- 4731-16-08 Criteria for approval.

The Ohio Academy of Nutrition and Dietetics finds the rules to be acceptable as proposed except for the following:

4731-16-02 General procedures in impairment cases.

Section (B) (4) at line 3 in the paragraph, the reference to (B)(-3) the “-“ appears to be an error. It should be “(B)(3)”.

The same error occurs again in section (C)(3) of the rule, on the third line, where it references (B)(-3). The “-“ appears to again be an error . It again should be “(B)(3)”.

Other than the type-o's above, the Ohio Academy of Nutrition and Dietetics supports the proposed amendments to all three rules.

OAND appreciates the State Medical Board of Ohio's effort to move the examination and treatment of impaired allied health professionals (including dietitians) to the out-patient setting when appropriate. This makes identification of impaired practitioners and options for treatment both financially and logically more accessible to our members - while still protecting the public.

We are certain that our licensed dietitian members will benefit from these proposed changes.

(Exhibit 7 at 6; emphasis in original)

CONCLUSION

The requirements of Chapter 119, Ohio Revised Code, have been satisfied. The Board may proceed to take action regarding the proposed revision of Rule 4731-6-05 and the proposed adoption of new Rule 4731-6-05; and the amendments of Rules 4731-16-02, 4731-16-05, 4731-16-08, 4731-22-07, and 4731-36-01.



R. Gregory Porter
Hearing Examiner

**MASTER COPY OF
PUBLIC RULES HEARING ON DECEMBER 3, 2021
REGARDING PROPOSED CHANGES TO
THE OHIO ADMINISTRATIVE CODE**

There are no sealed or proffered exhibits in this master copy.

- **Report of Hearing**
- **Transcript**
 - Full-Page Transcript
 - Word Index
- **Exhibits**

Exhibit 1: Copy of the rules originally filed in Package 191253 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021 and a copy of the confirmation of filing.

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Exhibit 7: Copies of the comments received from Sue Ciarlariello on behalf of the Ohio Society for Respiratory Care, and a technical question and comments from Kay Mavko on behalf of the Ohio Academy of Nutrition and Dietetics.

STATE MEDICAL BOARD
OF OHIO

RECEIVED:
December 20, 2021

**SUMMARY OF THE DECEMBER 3, 2021 PUBLIC HEARING
REGARDING PROPOSED CHANGES TO THE OHIO ADMINISTRATIVE CODE**

Pursuant to Section 119.03, Ohio Revised Code, a public hearing was held on December 3, 2021, to hear comments concerning proposed changes to the administrative rules of the State Medical Board of Ohio (“Board”). R. Gregory Porter, Hearing Examiner, presided.

PURPOSE OF THE HEARING

The following changes are proposed:

Medical or Osteopathic License

Rule No.	Title	Proposed Action
4731-6-05	Medical and Osteopathic License	Rescind
4731-5-05	Medical and Osteopathic License	Adopt

Impaired Practitioners

Rule No.	Title	Proposed Action
4731-16-02	General Provisions in Impairment Cases	Amend
4731-16-05	Examinations	Amend
4731-16-08	Criteria for Approval	Amend

Emeritus Registration

Rule No.	Title	Proposed Action
4731-22-07	Change to Active Status	Amend

Military Provisions Related to Education and Experience Requirements for Licensure Applicable to Service Members, Veterans, and Spouses of Service Members and Veterans

Rule No.	Title	Proposed Action
4731-36-01	Military Provisions Related to Education and Experience for Licensure	Amend

PROCEDURAL MATTERS

1. The record was held open until 5:00 p.m. on December 3, 2021, for the purpose of receiving additional written comments concerning the proposed changes to the Ohio Administrative Code. No additional comments were received.

2. The hearing examiner marked Exhibits 1 through 7 post hearing.

TESTIMONY HEARD

Kimberly Anderson, Chief Legal Counsel for the Board

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Exhibit 7: Copies of the comments received from Sue Ciarlariello on behalf of the Ohio Society for Respiratory Care, and a technical question and comments from Kay Mavko on behalf of the Ohio Academy of Nutrition and Dietetics.

SUMMARY OF EVIDENCE

1. Kimberly Anderson, Chief Legal Counsel for the Board, identified Exhibits 1 through 7. She further testified with respect to the notice that the Board provided to the public and interested parties regarding the proposed rule changes, and with respect to other procedural matters. Ms. Anderson further testified that written comments were received by the Board

prior to the hearing concerning the proposed amended rules which are marked as Exhibit 7. (Hearing Transcript at 6-9)

2. Sue Ciarlariello, MBA, RRT-NPS, RCP, Legislative Chair of the Ohio Society for Respiratory Care (“OSRC”), provided the following written commentary on behalf of OSRC:

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(Exhibit 7 at 1)

3. In an email to Board staff, Kay Mavko, MS, RDN, LD, State Regulatory Specialist for the Ohio Academy of Nutrition and Dietetics (“OAND”), inquired concerning a possible typographical error in proposed amended Rule 4731-16-02(B)(4) and (C)(3) where reference is made to a paragraph “(B)(-3).” (Exhibit 7 at 2)

Additionally, Ms. Mavko and Pat McKnight, MS, RDN, LD, Public Policy Committee Co-Chair for OAND, provided the following written commentary on behalf of OAND:

Thank you for the opportunity to review the rules being proposed for amendment by the State Medical Board of Ohio (SMBO) including:

- 4731-16-02 General procedures in impairment cases.
- 4731-16-05 Examinations.
- 4731-16-08 Criteria for approval.

The Ohio Academy of Nutrition and Dietetics finds the rules to be acceptable as proposed except for the following:

4731-16-02 General procedures in impairment cases.

Section (B) (4) at line 3 in the paragraph, the reference to (B)(-3) the “-“ appears to be an error. It should be “(B)(3)”.

The same error occurs again in section (C)(3) of the rule, on the third line, where it references (B)(-3). The “-“ appears to again be an error . It again should be “(B)(3)”.

Other than the type-o's above, the Ohio Academy of Nutrition and Dietetics supports the proposed amendments to all three rules.

OAND appreciates the State Medical Board of Ohio's effort to move the examination and treatment of impaired allied health professionals (including dietitians) to the out-patient setting when appropriate. This makes identification of impaired practitioners and options for treatment both financially and logically more accessible to our members - while still protecting the public.

We are certain that our licensed dietitian members will benefit from these proposed changes.

(Exhibit 7 at 6; emphasis in original)

CONCLUSION

The requirements of Chapter 119, Ohio Revised Code, have been satisfied. The Board may proceed to take action regarding the proposed revision of Rule 4731-6-05 and the proposed adoption of new Rule 4731-6-05; and the amendments of Rules 4731-16-02, 4731-16-05, 4731-16-08, 4731-22-07, and 4731-36-01.



R. Gregory Porter
Hearing Examiner

TRANSCRIPT

BEFORE THE OHIO STATE MEDICAL BOARD

- - -

In the Matter of the :
Proposed Rescinding and :
Proposed New Ohio Revised :
Code 4731-6-05 and :
Proposed Amending of Ohio :
Revised Code 4731-16-02, :
4731-16-05, 4731-16-08, :
4731-22-07, and :
4731-36-01. :

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PROCEEDINGS

before Mr. Greg Porter, Hearing Examiner, at the Ohio State Medical Board, 30 East Broad Street, Room 335, Columbus, Ohio, called at 1:32 p.m. on Friday, December 3, 2021.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481

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6	STATE EXHIBIT	IDENTIFIED ADMITTED
7	1 Copy of the Rules Originally Filed in Package 191253 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021, and a Copy of the Confirmation of Filing	7 9
11	2 Copy of the Rules Originally Filed in Package 191254 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021, and a Copy of the Confirmation of Filing	7 9
12	3 Copy of the Rules Originally Filed in Package 191256 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on October 29, 2021, and a Copy of the Confirmation of Filing	7 9
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1	INDEX (Continued)	
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3	STATE EXHIBIT	IDENTIFIED ADMITTED
4	5 Copy of the Notice of Public Hearing for the Rules in Packages 191253, 191254, 191256, and 191257 Originally Filed on October 29, 2021	8 9
6	6 Copies of the Address Portion of E-Mails Sent to Persons and Organizations Pursuant to Their Standing Request to be Notified When the Medical Board Proposes Rules	8 9
7	7 Copies of the Comments Received from Sue Ciarlariello on Behalf of the Ohio Society for Respiratory Care and a Technical Question and Comments from Kay Mavko on Behalf of the Ohio Academy of Nutrition and Dietetics	8 9

Friday Afternoon Session,

December 3, 2021.

— — —

HEARING EXAMINER: We can go on the record.

This public hearing for the State Medical Board of Ohio is now in session. Let the record show that this public hearing is convened at 1:30 p.m. on Friday, December 3, 2021, in Room 336 of the Rhodes State Office Tower.

1 With respect to impaired practitioners,
2 Rule 4731-16-02 general procedures in impairment
3 cases is proposed to be amended, 4731-16-05
4 examinations is proposed to be amended, and
5 4731-16-08 criteria for approval is also proposed to
6 be amended.

7 With respect to emeritus registration,
8 Rule 4731-22-07 change to active status is proposed
9 to be amended.

10 And with respect to military provisions
11 related to education and experience requirements for
12 licensure applicable to service members, veterans,
13 and spouses of service members and veterans, Rule
14 4731-36-01 titled military provisions related to
15 education and experience requirements for licensure
16 is proposed to be amended.

17 The purpose of this hearing today is to
18 provide -- provide an opportunity for any person
19 affected by the proposed rules to be heard. Any
20 affected person may present his or her position,
21 arguments, or contentions orally or in writing and
22 may present evidence tending to show that the
23 proposed adoption of the rules as proposed will be
24 unreasonable or unlawful.

25 And let the record reflect that we have

1 no members of the public present, so I won't address
2 the public members or -- members of the public who
3 are not here.

4 All right. I now recognize Kim Anderson,
5 Chief Legal Counsel for the Medical Board, for the
6 presentation of testimony on the Board's compliance
7 with the legal requirements in this matter. I call
8 Kim Anderson and ask that the witness be sworn.

9 (Witness sworn.)

10 HEARING EXAMINER: Please state your name
11 and how you are employed.

12 MS. ANDERSON: Kim Anderson, Chief Legal
13 Counsel, State Medical Board of Ohio.

14 HEARING EXAMINER: Are you familiar with
15 the filings and other actions taken for purposes of
16 the rules being considered today?

17 MS. ANDERSON: Yes.

18 HEARING EXAMINER: What part did you play
19 in the filing of the rules?

20 MS. ANDERSON: I participated in their
21 filings and the distribution of the notice of public
22 hearing.

23 HEARING EXAMINER: Can you identify the
24 documents -- excuse me, I am losing my voice -- that
25 have been marked as exhibits, please.

1 MS. ANDERSON: Yes. Exhibit 1 is a copy
2 of the rules originally filed in package 191253 with
3 JCARR, Secretary of State, and the Legislative
4 Services Commission via the Electronic Rule-Filing
5 System on October 29, 2021, and a copy of the
6 confirmation of filing.

7 Exhibit 2 is a copy of the rules
8 originally filed in package 191254 with JCARR,
9 Secretary of State, and the Legislative Services
10 Commission via the Electronic Rule-Filing System on
11 October 29, 2021, and a copy of the confirmation of
12 filing.

13 Exhibit 3 is a copy of the rules
14 originally filed in package 191256 with JCARR,
15 Secretary of State, and the Legislative Services
16 Commission via the Electronic Rule-Filing System on
17 October 29, 2021, and a copy of the confirmation of
18 filing.

19 Exhibit 4 is a copy of the rules
20 originally filed in package 191257 with JCARR,
21 Secretary of State, and the Legislative Services
22 Commission via the Electronic Rule-Filing System on
23 October 29, 2021, and a copy of the confirmation of
24 filing.

25 HEARING EXAMINER: Was public notice of

1 the rules that are the subject of this hearing given
2 in the Register of Ohio at least 30 days prior to
3 today?

4 MS. ANDERSON: Yes. Exhibit 5 is a copy
5 of the notice of public hearing for the rules in
6 packages 191253, 191254, 191256, and 191257
7 originally filed on October 29, 2021.

8 HEARING EXAMINER: Was notices of the
9 proposed rules provided to any persons or
10 organizations?

11 MS. ANDERSON: Yes. Exhibit 6 contains
12 copies of the address portion of e-mails sent to
13 persons and organizations pursuant to their standing
14 request to be notified when the Medical Board
15 proposes rules.

16 HEARING EXAMINER: Were any requests for
17 copies of the proposed rules received in the Board's
18 office?

19 MS. ANDERSON: No.

20 HEARING EXAMINER: Were any written
21 comments of the proposed rules received in the
22 Board's office?

23 MS. ANDERSON: Yes. Exhibit 7 contains
24 copies of the comments received from Sue Ciarlariello
25 on behalf of the Ohio Society for Respiratory Care, a

1 technical question and comments from Kay Mavko on
2 behalf of the Ohio Academy of Nutrition and
3 Dietetics.

4 HEARING EXAMINER: Thank you. I will
5 admit Exhibits 1 through 7 to the record.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 HEARING EXAMINER: Thank you,
8 Ms. Anderson.

9 MS. ANDERSON: Thank you.

10 HEARING EXAMINER: Okay. It would now be
11 the time to receive testimony concerning the proposed
12 rules from interested parties. We did receive the
13 written comments Ms. Anderson referred to but there
14 are no members of the public present today, so I will
15 dispense all the language that goes along with public
16 testimony.

17 The record will be held open until
18 5 o'clock p.m. today for the sole purpose of
19 receiving any written -- any additional written
20 comments on the proposed rules. Please send them to
21 my e-mail address greg.porter@med.ohio.gov.

22 I thank everyone for attending this
23 public rules hearing. The Board will weigh the
24 testimony and evidence presented today before
25 considering action on the proposed rules. Any future

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1 action by the Board on these proposed rules will take
2 place at a regular monthly meeting of the Board which
3 is open to the public.

4 Any formal action by the Board will
5 comply with Chapter 119 Ohio Revised Code. And this
6 public hearing is concluded at approximately 1:40.
7 Thank you very much.

8 (Thereupon, at 1:40 p.m., the hearing was
9 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Friday, December 3,
5 2021, and carefully compared with my original
6 stenographic notes.

7
8 
9 Karen Sue Gibson, Registered
10 Merit Reporter.

11 (KSG-7195)

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EXHIBITS

4731-6-05

Medical and osteopathic examination.

(A) The medical and osteopathic examinations shall be all steps of the USMLE or all levels of the COMLEX-USA.

(B) An applicant shall have passed all steps of the USMLE or all levels of the COMLEX-USA within a ten-year period, and achieved a recognized passing performance on each step or level. No applicant may have exceeded the maximum number of attempts for any step or level established by the national board of medical examiners or the national board of osteopathic medical examiners, as effective on the date of application for a license.

(C) The board may waive the requirements of paragraph (B) of this rule, if the applicant meets one or more of the following, as applicable:

(1) Holds current specialty board certification from a member board of the American board of medical specialties or the AOA; or

(2) Demonstrates that a step or level was completed within the maximum number of attempts permitted by the national board of medical examiners or the national board of osteopathic medical examiners, at the time the step or level was successfully completed, provided that the applicant did not exceed six attempts for the step or level.

(3) Demonstrates good cause, as determined by the board, for not having passed all steps or levels with a ten-year period.

(4) Steps or levels of the USMLE and COMLEX-USA cannot be combined to fulfill an acceptable testing sequence as required by this rule.

Exhibit 1

Replaces: 4731-6-05

Effective:

Five Year Review (FYR) Dates:

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Date

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TO BE RESCINDED

4731-6-05

Medical and osteopathic examination.

- (A) The medical and osteopathic examinations shall be all steps of the USMLE or all levels of the COMLEX-USA.
- (B) An applicant shall have passed all steps of the USMLE or all levels of the COMLEX-USA within a ten-year period, and achieved a recognized passing performance on each step or level. No applicant shall have failed any step or level more than five times.
- (C) The board may grant a good cause waiver to any applicant that does not meet the requirements of paragraph (B) of this rule, if the applicant meets the following:
 - (1) Holds current specialty board certification from a member board of the American board of medical specialties or the AOA; or
 - (2) Demonstrates good cause, as determined by the board, for not having passed all three steps or levels within the ten year period, and otherwise meets the requirements set forth in paragraph (B) of this rule.
- (D) Steps or levels of the USMLE and COMLEX-USA cannot be combined to fulfill an acceptable testing sequence as required by this rule.

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06/30/2005, 04/30/2009, 10/31/2013, 08/31/2017,
07/31/2019



ELECTRONIC RULE-FILING SYSTEM

The Honorable Frank LaRose
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It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191253

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ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-6-05	Rescission	Y	Y	01/02/2022			Medical and osteopathic examination.
4731-6-05	New	N	Y	01/02/2022			Medical and osteopathic examination.

4731-16-02

General procedures in impairment cases.

(A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of 4778.14 of the Revised Code, it may compel the individual to submit to a mental or physical examination, or both.

- (1) Such examinations shall be undertaken by an approved treatment provider designated by the board.
- (2) The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired.
- (3) Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.

(B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, the following general pattern of action shall be followed:

- (1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.
 - (a) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code unless

Exhibit 2

other investigation produces reliable, substantial, and probative evidence demonstrating impairment.

- (b) If the examination or examinations disclose impairment, or if the board has other reliable, substantial and probative evidence demonstrating impairment, the board shall initiate proceedings to suspend the license or deny the applicant. The board may issue an order of summary suspension as provided in division (G) of section 4730.25 of the Revised Code, division (G) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (G) of section 4760.13 of the Revised Code, ~~or division (G) of section 4761.09 of the Revised Code~~, division (G) of section 4762.13 of the Revised Code, division (G) of section 4774.13 of the Revised Code, or division (G) of section 4778.14 of the Revised Code.
- (2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:
 - (a) The individual has relapsed during or following treatment;
 - (b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program;
 - (c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance.
- (3) Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's licensee certificate. Such demonstrations shall include but shall not be limited to the following:
 - (a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed all required treatment, as follows:
 - (i) Except as provided in paragraph (B)(3)(a)(ii) of this rule, the required treatment shall include inpatient or residential treatment that extends a minimum of twenty-eight days with the following

exception: If the individual has previously completed an inpatient or residential treatment program of at least twenty-eight days and maintained sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.

- (ii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who does not meet the criteria set forth in paragraph (B)(3)(a)(iii) of this rule, the required treatment shall include intensive outpatient treatment meeting the requirements of paragraph (A)(13) of rule 4731-16-08 of the Administrative Code. The required intensive outpatient treatment must include a minimum of twenty treatment sessions over no less than five consecutive weeks with the following exception: If the massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist has previously completed an intensive outpatient treatment program of at least twenty treatment sessions over no less than five consecutive weeks and has maintained sobriety for at least one year following completion of that intensive outpatient treatment, the treatment required shall be determined by the treatment provider.
- (iii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application for or while holding any license or certificate issued by the board other than a license or certificate to practice massage therapy, dietetics, respiratory care, as a radiologist assistant, or as a genetic counselor or cosmetic therapy, the required treatment shall be in compliance with paragraph (B)(3)(a)(i) of this rule.

(b) Evidence of continuing full compliance with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and with any consent agreement or order of the board then in effect;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for this determination. A physician who is the medical director of a treatment provider approved

under section 4731.25 of the Revised Code and this chapter of the Administrative Code may perform such an assessment without prior board approval.

- (4) Subject to the provisions of paragraph (D) of this rule, the board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(-3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or after the board has issued a final order in lieu of a consent agreement.
- (5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission by the individual to the board, for at least two years, of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.

(C) In cases where the board has initiated a disciplinary action for violations of any provisions of Chapter 4731., Chapter 4730., Chapter 4759., Chapter 4760., Chapter 4761., ~~or~~ Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code or any of its rules in addition to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 or the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code, the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:

- (1) If the board permanently revokes a license, the individual shall not be eligible for further consideration for licensure or license reinstatement;
- (2) If the board imposes a period of ineligibility for licensure, the individual shall not be eligible for licensure or license reinstatement until the period of ineligibility has lapsed;
- (3) If the board imposes an indefinite period of ineligibility, licensure or license reinstatement shall depend upon successful completion of the requirements in paragraphs (B)(-3) and (B)(4) of this rule and determination by the board that the period of suspension or ineligibility served is commensurate with the violations found.

(D) Except as provided in this paragraph, an individual who has relapsed during or following treatment shall be ineligible to apply for reinstatement for at least ninety days following the date of license suspension for a first relapse, for at least one year following the date of license suspension for a second relapse, and for at least three years following the date of license suspension for a third relapse. An individual who suffers a relapse, as that term is defined in paragraph (B) of rule 4731-16-01 of the Administrative Code, will not be subjected to suspension or other board discipline based on that relapse if all of the following conditions are met:

- (1) The relapse was the first ever suffered by the individual;
- (2) The relapse occurred under circumstances that the board finds minimized the probability that the individual would either provide patient care while under influence of alcohol or drugs or leave patients without necessary care while under the influence of alcohol or drugs;
- (3) The relapse involved a single occasion of use for less than one day;
- (4) The individual self-reported the relapse within forty-eight hours in accordance with rule 4731-15-01 of the Administrative Code;
- (5) The individual does not thereafter suffer another relapse;
- (6) The board does not obtain evidence of acts, conduct or omissions that would support the imposition of discipline, apart from the relapse itself;
- (7) The relapse does not lead to the individual being charged with any criminal offense;
- (8) The individual reported the relapse to an approved treatment provider within forty-eight hours, submitted to evaluation as requested by the approved treatment provider, and obtained any additional treatment recommended;
- (9) The individual suspended practice until the approved treatment provider reported in writing to the board that it had made a clear determination that the individual was capable of practicing according to acceptable and prevailing standards of care; and
- (10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are not circumstances warranting the initiation of disciplinary action.

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01/31/2009

4731-16-05

Examinations.

(A) Any examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, ~~or~~ division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code in order to determine impairment, or any examination of an applicant for or a holder of a certificate issued under Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760. Chapter 4761., ~~or~~ Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code performed by an approved treatment provider shall include all of the following:

- (1) Urine, hair screening or blood toxicology alcohol testing, or any combination both, with legal chain of custody and forensic capability protocol;
- (2) Comprehensive evaluation pertinent to the reasons for referral, including:
 - (a) Complete medical history and physical examination;
 - (b) Routine laboratory tests, to include complete blood count and liver function studies;
 - (c) ~~(b)~~ Psychiatric evaluation, except as in paragraph (A)(3)(b)(ii); and mental status examination;
 - (d) ~~(c)~~ Comprehensive biopsychosocial assessment; chemical use history; and
 - (e) Corroborating interviews of at least two persons who are close to the individual;
 - (f) Administration of at least two clinically approved substance use disorder assessment tools; and
- (3) One of the following assessment standards, as applicable:
 - (a) Except as provided in paragraph (A)(3)(b) of this rule, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.
 - (b) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic~~

~~therapist~~ who does not meet the criteria set forth in paragraph (A)(3)(c) of this rule:

- (i) ~~In depth Outpatient assessment that meets the requirements of (A)(1) and (2), including use of a structured interview, by a physician, registered nurse or nurse practitioner who has specialized training in addiction medicine or treatment of addiction, or by a licensed independent chemical dependency counselor or licensed chemical dependency counselor III;~~
- (ii) ~~Routine laboratory tests, to include complete blood count and liver function studies;~~
- (iii) ~~Corroborating interviews of at least two persons who are close to the individual;~~
- (iv) ~~Administration of the "Beck Depression Inventory" and the "Hamilton Anxiety Survey;" and~~
- (v) Any other requirements as identified by the board or treatment provider. Psychiatric evaluation is not required in an examination administered under this paragraph unless the need for such an evaluation is identified by the board of the treatment provider.

(c) If the individual is a ~~massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist~~ who was investigated by the board for possible impairment as part of a previous application for or while holding any certificate issued by the board, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.

(B) A diagnosis made by an approved treatment provider based on an examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, ~~division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4778.14 of the Revised Code~~ shall be made solely for the purpose of providing evidence for use by the board. A licensee or applicant who undergoes an examination ordered by the board but who refuses to authorize the treatment provider to release reports or information to the board shall be deemed to

have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence as provided in division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, ~~or division (F) of section 4761.09 of the Revised Code~~, division (F) (2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code.

- (C) The report issued pursuant to an examination ordered by the board shall be submitted to the board within five days following completion of the examination.
- (D) The board may require the certificate holder or applicant to submit to a drug toxicology screen at the time it serves its order to submit to an examination or at any time after it issues the examination order and before the examination is completed.
 - (1) The drug toxicology screen shall be considered part of the examination.
 - (2) Refusal to submit to the drug toxicology screen immediately upon such request shall constitute failure to submit to a mental or physical examination ordered by the board and shall constitute an admission of the allegations against the individual, unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.
- (E) An individual ordered by the board to an examination who refuses to authorize the treatment provider to contact any person identified by the treatment provider as being appropriate for the purpose of conducting a corroborating interview as part of the examination shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered into without the taking of testimony or presentation of evidence.

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01/31/2009, 04/30/2009

4731-16-08

Criteria for approval.

(A) Criteria for approval of treatment providers shall include all of the following:

- (1) The philosophy and individualized treatment plan of the program is based on the disease concept.
- (2) The chemical dependency model of treatment is based on a twelve-step program such as alcoholics anonymous.
- (3) The program provides specialized medical and nursing care during detoxification and appropriate health care professionals during treatment phase.
- (4) The evaluation process is an objective, measurable program which uses tools and testing procedures to identify patterns, progression, and stages of recovery at appropriate times in the treatment program. The evaluation shall also emphasize patient self-assessment.
- (5) The treatment provider has a network of referral agencies or professionals which meets the needs of the practitioner and significant others in the event that the needs go beyond the program's expertise or available facilities.
- (6) The treatment provider has a variety of treatment plan options including inpatient detoxification treatment, inpatient or residential treatment, and outpatient services.
- (7) The involvement and treatment of family and significant others is provided.
- (8) The provider gives each patient who has been diagnosed as in need of treatment a written list of approved treatment providers from whom indicated inpatient or residential treatment, outpatient treatment, or aftercare can be obtained.
- (9) The provider holds certification as an alcoholism program or drug treatment program by the Ohio department of alcohol and drug addiction services, or if located outside Ohio, holds appropriate certification or registration with an agency exercising a similar function in the state in which it is located.
- (10) The provider provides advocacy services only at no cost to the patient, or provides such services only after obtaining the signature of the patient acknowledging that he or she has been notified:
 - (a) That advocacy is not treatment;
 - (b) That nothing in Chapter 4730., 4731., 4759., 4760., 4761., ~~or 4762.~~, 4774., or 4778. of the Revised Code or this chapter of the Administrative Code

requires a practitioner to obtain aftercare, monitoring or advocacy from the provider of inpatient or extended residential treatment or intensive outpatient treatment, as applicable; and

- (c) That the practitioner's refusal to obtain aftercare, monitoring, or advocacy services from the provider of inpatient treatment or intensive outpatient treatment, as applicable, shall not constitute grounds to report to the board so long as the practitioner demonstrates that the practitioner has contracted with another approved treatment provider to receive any further recommended treatment.
- (11) The provider has the capability of making an initial examination to determine what type of treatment an impaired practitioner requires.
- (12) The provider requires that each patient who is subject to the jurisdiction of the board, who is determined to be impaired, except as provided in paragraph (A) (13) of this rule, complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The exceptions in paragraph (C) of this rule notwithstanding, the provider must personally provide the required inpatient or residential treatment and the assessment or must confirm that another approved treatment provider has provided the inpatient or residential treatment and the assessment before providing any outpatient treatment or aftercare. The inpatient or residential treatment program must have a continuing inpatient or residential patient census sufficient to provide an appropriate treatment milieu for patients receiving treatment in the inpatient or residential setting. This paragraph shall not apply to a patient who has previously completed an inpatient or residential treatment program of at least twenty-eight days if the patient was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment.
- (13) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who is determined to be impaired and who does not meet the criteria set forth in paragraph (A)(14) of this rule, complete a minimum of twenty treatment sessions over no less than five consecutive weeks of intensive outpatient treatment, after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The intensive outpatient treatment must include:

- (a) Witnessed toxicology screens with legal chain of custody and forensic capability performed weekly at therapy sessions;
- (b) At least three twelve-step meetings weekly;
- (c) All treatment sessions lasting a minimum of three hours, not including time spent watching videos or participating in twelve-step meetings;
- (d) Family education lasting at least two hours weekly.

(14) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application or while holding any certificate by the board other than a certificate to practice as a massage therapist, dietitian, respiratory care professional, radiologist assistant or genetic counselor or cosmetic therapist, complete the inpatient or residential treatment required in paragraph (A)(12) of this rule.

(15) If the provider did not hold approval under this chapter prior to January 1, 2001, the provider is accredited by the joint commission on accreditation of health care organizations or by CARF (~~eommision~~commission on accreditation of rehabilitation facilities.)

(B) A treatment provider which does not meet the criteria of paragraph (A)(1) or (A)(2) of this rule may nonetheless be considered for approval if it establishes by evidence acceptable to the board that its philosophy, individualized treatment plan, or model of treatment is based on current scientific advances in the field of chemical dependency, and that its success in treatment is comparable or superior to that obtained by treatment providers which meet all the criteria of paragraph (A) of this rule.

(C) A treatment provider that does not meet the criteria of paragraph (A)(3) or (A)(6) of this rule because it does not offer all phases of treatment may nonetheless be considered for approval if it meets both of the following requirements.

- (1) If it does not offer detoxification treatment, its policies and procedures are structured to assure that all patients who enter treatment have completed detoxification where detoxification is medically indicated.
- (2) If it does not offer one or more required treatment phases (e.g. - inpatient treatment, intensive outpatient treatment, or extended residential treatment), it has affiliation agreements or working relationships with other treatment providers to which patients can be referred for any necessary treatment it does not offer.

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Rule Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25,
4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
Prior Effective Dates: 12/01/1991, 09/01/1999, 11/30/2002, 06/30/2007,
01/31/2009



ELECTRONIC RULE-FILING SYSTEM

The Honorable Frank LaRose
Secretary of State
180 E. Broad St., 16th Floor
Columbus, OH 43215

Wendy Zhan, Director
Legislative Service Commission
77 South High St., 9th Floor
Columbus, OH 43215

Larry Wolpert, Director
Joint Committee on Agency Rule Review
77 South High St., Concourse Level
Columbus, OH 43215

It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191254

File Date and Time: 10/29/2021 2:42 PM

Confirmation Number: 77fc9a8db5806ce142a393b92f6563b

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-16-02	Amendment	N	Y	01/02/2022			General procedures in impairment cases.
4731-16-05	Amendment	N	Y	01/02/2022			Examinations.
4731-16-08	Amendment	N	Y	01/02/2022			Criteria for approval.

4731-22-07

Change to active status.

(A) A registrant may apply to change to active status by completing the following:

- (1) If the application is received no more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a reinstatement application.
- (2) If the application is received more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a restoration application.

(B) The reinstatement or restoration application shall include all of the following.

- (1) Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.
- (2) Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code if the registrant is a physician or pursuant to section 4731.15 of the Revised Code if the registrant is a massage therapist ~~or cosmetic therapist~~.
- (3) Submission of any other information required by the board.

(C) In the event the holder of an emeritus certificate applies for restoration after two years from the date the registrant's Ohio license expired or if the registrant has not engaged in practice for more than two years, the board may require the applicant to demonstrate present fitness to practice pursuant to section 4731.222 of the Revised Code.

Exhibit 3

Effective:

Five Year Review (FYR) Dates: 8/31/2022

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05, 4731.15
Rule Amplifies: 4731.15, 4731.22, 4731.222, 4731.281
Prior Effective Dates: 07/01/1999, 08/31/2006, 08/31/2017



ELECTRONIC RULE-FILING SYSTEM

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It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191256

File Date and Time: 10/29/2021 2:31 PM

Confirmation Number: 79b172dc1862ae4c12d7c3bed78fbef0

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-22-07	Amendment	N	Y	01/02/2022			Change to active status.

4731-36-01

Military provisions related to education and experience requirements for licensure.**(A) Definitions**

For purposes of this chapter:

- (1) "Armed forces" means any of the following:
 - (a) The armed forces of the United States, including the army, navy, air force, marine corps, and coast guard;
 - (b) A reserve component of the armed forces listed in paragraph (A)(1)(a) of this rule;
 - (c) The national guard, including the Ohio national guard or the national guard of any other state;
 - (d) The commissioned corps of the United States public health service;
 - (e) The merchant marine service during wartime;
 - (f) Such other service as may be designated by Congress; or
 - (g) The Ohio organized militia when engaged in full-time national guard duty for a period of more than thirty days.
- (2) "Board" means the state medical board of Ohio.
- (3) "Service member" means any person who is serving in the armed forces.
- (4) "Veteran" means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces, who has been discharged under honorable conditions from the armed forces or who has been transferred to the reserve with evidence of satisfactory service.

(B) Education and service for eligibility for licensure.

- (1) In accordance with section 5903.03 of the Revised Code, the following military programs of training, military primary specialties, and lengths of service are substantially equivalent to or exceed the educational and experience requirements for licensure as a physician assistant and for a prescriber number:

Exhibit 4

- (a) An individual serving in a military primary specialty listed in paragraph (B) (1)(b) of this rule must be a graduate of a physician assistant education program approved by the accreditation review commission on education for the physician assistant.
- (b) Service in one of the following military primary specialties for at least two consecutive years while on active duty, with evidence of service under honorable conditions, including any experience attained while practicing as a physician assistant at a health care facility or clinic operated by the United States department of veterans affairs, may be substituted for a master's degree for eligibility for a license to practice as a physician assistant pursuant to section 4730.11 of the Revised Code and for a prescriber number pursuant to section 4730.15 of the Revised Code;
 - (i) Army: MOS 65D;
 - (ii) Navy: NOBC 0113;
 - (iii) Air force: AFSC 42G;
 - (iv) The national guard of Ohio or any state;
 - (v) Marine: Physician assistant services are provided by navy personnel;
 - (vi) Coast guard;
 - (vii) Public health service.
- (2) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a ~~cosmetic therapist~~ or massage therapist.
- (3) For purposes of section 5903.03 of the Revised Code, the board has determined that:
 - (a) A diploma from a military medical school or military osteopathic medical school that at the time the diploma was issued was a medical school accredited by the liaison committee on medical education or an osteopathic medical school accredited by the American osteopathic association are substantially equivalent to the medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery;

- (b) Military graduate medical education that is accredited by the accreditation council for graduate medical education is substantially equivalent to the graduate medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery; and
- (c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice medicine and surgery or osteopathic medicine and surgery.

(4) For purposes of section 5903.03 of the Revised Code, the board has determined that:

- (a) A degree from a military college of podiatric medicine and surgery that at the time the degree was granted was a college of podiatric medicine and surgery accredited by the council on podiatric medical education is substantially equivalent to the medical educational requirement for licensure to practice podiatric medicine and surgery;
- (b) Military postgraduate training in a podiatric internship, residency, or clinical fellowship program accredited by the council on podiatric medicine is substantially equivalent to the graduate medical educational requirement for licensure to practice podiatric medicine and surgery; and
- (c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice podiatric medicine and surgery.

(5) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a dietitian.

(6) For purposes of section 5903.03 of the Revised Code, the board recognizes respiratory care educational programs offered by branches of the United States military that have been issued provisional accreditation, initial accreditation, continuing accreditation or other accreditation status conferred by the commission on accreditation for respiratory care (CoARC) or their successor organization that permits respiratory care programs offered by the United States military to continue to enroll and/or graduate students

(7) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, and

lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as an acupuncturist ~~or oriental medicine practitioner~~.

- (8) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a radiologist assistant.
- (9) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a genetic counselor.

Effective:

Five Year Review (FYR) Dates: 10/29/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5903.03, 5903.04, 4731.05
Rule Amplifies: 5903.04
Prior Effective Dates: 07/14/2003, 06/04/2014, 06/30/2014, 09/30/2015,
12/31/2015, 04/30/2019, 07/31/2019, 11/30/2019,
12/31/2020



ELECTRONIC RULE-FILING SYSTEM

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It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 191257

File Date and Time: 10/29/2021 2:28 PM

Confirmation Number: 7cc169f771bfbb1164e13e387b659a0

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4731-36-01	Amendment	Y	Y	01/02/2022			Military provisions related to education and experience requirements for licensure.

**MEDICAL BOARD
NOTICE OF PUBLIC HEARING**

The **State Medical Board of Ohio**, pursuant to Chapter 119, Ohio Revised Code, hereby gives notice that it will conduct a public hearing to consider the adoption of rules.

The public hearing will be conducted on **Friday, December 3, 2021, at 1:30 p.m. in Room 336 of the Rhodes State Office Tower, 30 E. Broad St., 3rd Floor, Columbus, OH 43215.**
Oral or written testimony may be presented by any person affected by the proposed actions.

The following rules are proposed:

Medical or Osteopathic License

4731-6-05	Medical and osteopathic examination	Proposed to Rescind
4731-6-05	Medical and osteopathic examination	Proposed New Rule

Impaired Practitioners

4731-16-02	General procedures in impairment cases	Proposed to Amend
4731-16-05	Examinations	Proposed to Amend
4731-16-08	Criteria for approval	Proposed to Amend

Emeritus Registration

4731-22-07	Change to active status	Proposed to Amend
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Military Provisions Related to Education and Experience requirements for Licensure Applicable to Service Members, Veterans, and Spouses of Service Members and Veterans

4731-36-01	Military Provisions Related to Education and Experience Requirements for Licensure	Proposed to Amend
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The proposed rules will be available from:

- State Medical Board of Ohio, 30 East Broad Street, 3rd Floor, Columbus, OH 43215
- Medical Board's website: <https://med.ohio.gov/Laws-Rules/Newly-Adopted-and-Proposed-Rules>
Under the heading "Public Rules Hearing Notices"
- Register of Ohio website: <http://www.registerofohio.state.oh.us/rules/search>

All interested persons will be given the opportunity to be heard at the public hearing. Those persons who wish to provide oral testimony at the hearing should preregister by contacting Kimberly Anderson at the address below. Persons providing oral testimony are encouraged to also submit a copy of the testimony to Kimberly Anderson at the email address below.

All written comments received by the Board before the close of the hearing record will be considered. **Written comments may be provided at the public hearing.** However, persons interested in providing written comments are encouraged to do so prior to December 3, 2021.

Exhibit 5

- via e-mail to: Kimberly.Anderson@med.ohio.gov

- via mail to: **Kimberly Anderson, Chief Legal Counsel**
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, OH 43215-6127

From: [Rodriguez, Judith](#)
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Subject: Notice of 12/3/21 Rule Hearing
Date: Tuesday, November 2, 2021 1:08:00 PM
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)
[Public Hearing notice.pdf](#)
[Rules for December 3, 2021 Hearing.pdf](#)

Please see the attached notice of a Rules Hearing on December 3, 2021 and the proposed rules.

Judy Rodriguez
Public Services Manager

State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-4999
w: med.ohio.gov



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Subject: FW: Notice of 12/3/21 Rule Hearing
Date: Tuesday, November 2, 2021 1:10:00 PM
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)
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Subject: Notice of 12/3/21 Rule Hearing

Please see the attached notice of a Rules Hearing on December 3, 2021 and the proposed rules.

Judy Rodriguez
Public Services Manager

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Ohio Society for Respiratory Care Testimony on State Medical Board Rules:

OAC 4731-16-02 General procedures in impairment cases

OAC 4731-16-05 Examinations

OAC 4731-16-08 Criteria for approval

November 15, 2021

The Ohio Society for Respiratory Care (OSRC) fully supports the changes proposed in the above rules concerning the required mental or physical examinations and treatment in impairment cases. The OSRC appreciates the State Medical Board's proposal to change the intensive examination and treatment requirements from inpatient to outpatient for licensed respiratory care professionals (RCPs). The cost of the previous inpatient assessment and residential treatment was causing some RCPs to surrender their licenses in lieu of treatment; the average income for an RCP is \$59,000 which is a livable wage, but not an income that could readily support over \$3000 for an inpatient assessment, especially when their work may be under suspension. We believe that the goal of this required program for impaired individuals is to provide treatment and rehabilitation, not to drive at-risk persons out of the workforce. Respiratory therapists are on the front line of this COVID pandemic and exposed to life and death situations regularly. Over the past year, long work hours, unmanageable workloads, and significant number of ventilator patient deaths in the ICU has contributed to staff burnout. We hope that our RCP licensees remain resilient, but if they succumb to addictive behaviors or poor judgment, we feel this is a safe, effective, and affordable outpatient alternative to get them the treatment they will need to return to their chosen professional occupation. Thank you for your support in this matter.

Sue Ciarlariello MBA, RRT-NPS, RCP
Ohio Society for Respiratory Care, Legislative Chair
susanciar@outlook.com 937-239-2458

From: [Anderson, Kimberly](#)
To: [Rodriguez, Judith](#)
Subject: FW: Draft Rule 4731-16-02 Question
Date: Wednesday, November 17, 2021 2:27:31 PM
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)

Rule comment. I believe we will receive an official letter from OAND

Kimberly Anderson
Chief Legal Counsel
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-7207
c: 614-230-9077
Kimberly.Anderson@med.ohio.gov



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From: kmavko@columbus.rr.com <kmavko@columbus.rr.com>
Sent: Friday, November 12, 2021 3:09 PM
To: Anderson, Kimberly <Kimberly.Anderson@med.ohio.gov>
Subject: Draft Rule 4731-16-02 Question

Kim,

I have a quick question about this rule. On page #4 in rule 4731-16-02 (B)(4); and (C)(3) There is reference to "(B)(-3)" ? I don't understand where a (B)(-3) is?

Typo? Or me being "dumbo" ... and not understanding something.....

You can anticipate a letter of support from me for these rules on behalf of OAND before the due

date.

Kay Mavko

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From: [Anderson, Kimberly](#)
To: [Rodriguez, Judith](#)
Subject: FW: OAND Comments for December 3, 2021 Rules Hearing
Date: Monday, November 22, 2021 8:38:52 AM
Attachments: [4731-6-02 com-KA-11-2021.docx](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)

Judy-

For the rules hearing. Thanks.

Kimberly Anderson
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State Medical Board of Ohio
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Columbus, Ohio 43215
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From: kmavko@columbus.rr.com <kmavko@columbus.rr.com>
Sent: Thursday, November 18, 2021 6:25 PM
To: Anderson, Kimberly <Kimberly.Anderson@med.ohio.gov>
Subject: OAND Comments for December 3, 2021 Rules Hearing

Kimberly Anderson,

Attached please find comments submitted on behalf of the Ohio Academy of Nutrition and Dietetics (OAND) in regards to 3 rules being proposed related to Impairment and scheduled for a Public Hearing on December 3 at 1:30 pm.

OAND supports the amendments being proposed to Administrative Rules OAC 4731-16-02; 4731-16-05; and 4731-16-08. We request that our comments be entered into the record of the scheduled hearing. We do not intend to testify in person.

Thank you for the opportunity to review these important rules that affect our members who are licensed by the State Medical Board of Ohio.

Kay Mavko, MS, RDN, LD
State Regulatory Specialist
Ohio Academy of Nutrition and Dietetics

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11/19/2021

Kimberly C. Anderson
Chief Legal Counsel
State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, Ohio 43215-6127

Thank you for the opportunity to review the rules being proposed for amendment by the State Medical Board of Ohio (SMBO) including:

4731-16-02 General procedures in impairment cases.

4731-16-05 Examinations.

4731-16-08 Criteria for approval.

The Ohio Academy of Nutrition and Dietetics finds the rules to be acceptable as proposed except for the following:

4731-16-02 General procedures in impairment cases.

Section (B) (4) at line 3 in the paragraph, the reference to (B)(-3) the “-“ appears to be an error. It should be “(B)(3)”.

The same error occurs again in section (C)(3) of the rule, on the third line, where it references (B)(-3). The “-“ appears to again be an error . It again should be “(B)(3)”.

Other than the type-o's above, the Ohio Academy of Nutrition and Dietetics supports the proposed amendments to all three rules.

OAND appreciates the State Medical Board of Ohio's effort to move the examination and treatment of impaired allied health professionals (including dietitians) to the out-patient setting when appropriate. This makes identification of impaired practitioners and options for treatment both financially and logically more accessible to our members - while still protecting the public.

We are certain that our licensed dietitian members will benefit from these proposed changes.

Kay Mavko, MS, RDN, LD
State Regulatory Specialist
Ohio Academy of Nutrition and Dietetics

Pat McKnight, MS, RDN, LD
Public Policy Committee Co-Chair
Ohio Academy of Nutrition and Dietetics



MEMORANDUM

TO: Betty Montgomery, President
Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Final Adoption-Rule 4731-30-03

DATE: December 30, 2021

On December 10, 2021, the proposed amendments to internal management rule 4731-30-03, which were approved at the December Board meeting, were circulated to interested parties for comment. Two comments were received, which are attached for your review.

The first comment from rbeck3@woh.rr.com states that the proposed changes seem reasonable. The second comment, from Sarah Tope, LMT questions the purpose of the amendment. I responded to Ms. Tope's question regarding the purpose of the rule and it is also attached for your review.

Proposed Action: Approve filing the proposed amendments to internal management rule 4731-30-03 for approval of licensure applications with an effective date of January 31, 2022.

*** DRAFT - NOT YET FILED ***

4731-30-03

Approval of licensure applications.

(A) For purposes of this rule, routine authorization means issuance of a license or certificate to an individual pursuant to an application that meets the following criteria:

- (1) The applicant meets eligibility requirements for the license or certificate under the applicable provisions of the Revised Code and Administrative Code
- (2) If applicable, the secretary and supervising member of the board has granted to the~~The~~ applicant ~~is not seeking~~ a waiver of, or a determination of equivalency to, any eligibility requirement, as may be provided for under the applicable provisions of the Revised Code and Administrative Code
- (3) If applicable, the secretary and supervising member of the board has determined that the~~The~~ applicant ~~has is not required to~~ demonstrated fitness to resume practice due to inactivity under the applicable provisions of the Revised Code and Administrative Code
- (4) The application presents no grounds for discipline under the applicable provisions of the Revised Code or Administrative Code.

(B) The board authorizes the secretary and supervising member of the board to issue the following routine authorizations under the provisions of the Revised Code and Administrative Code, without prior consultation or approval by the board:

- (1) Certificate of conceded eminence pursuant to section 4731.297 of the Revised Code;
- (2) Clinical research faculty certificate pursuant to section 4731.293 of the Revised Code;
- (3) Visiting clinical professional development certificate pursuant to section 4731.298 of the Revised Code;
- (4) Special activity certificate pursuant to section 4731.294 of the Revised Code;
- (5) Special activity license to practice as a genetic counselor pursuant to section 4778.09 of the Revised Code.
- (6) Expedited license to practice medicine and surgery or osteopathic medicine and surgery by endorsement pursuant to section 4731.299 of the Revised Code;

*** DRAFT - NOT YET FILED ***

- (7) Certificate to recommend medical use of marijuana pursuant to section 4731.30 of the Revised Code;
- (C) The board authorizes the deputy director of licensure, or the deputy director's designee, to issue the following routine authorizations under the provisions of the Revised Code and Administrative Code, without prior consultation or approval by the board:
 - (1) License to practice as a physician assistant pursuant to section 4730.12 of the Revised Code;
 - (2) License to practice medicine and surgery or osteopathic medicine and surgery pursuant to section 4731.14 of the Revised Code;
 - (3) License to practice a limited branch of medicine pursuant to section 4731.17 of the Revised Code;
 - (4) Training certificate pursuant to section 4731.291 of the Revised Code;
 - (5) Volunteer's certificate pursuant to section 4731.295 of the Revised Code;
 - (6) License to practice podiatric medicine and surgery pursuant to section 4731.56 of the Revised Code;
 - (7) Visiting podiatric faculty certificate pursuant to section 4731.572 of the Revised Code;
 - (8) Podiatric training certificate pursuant to section 4731.573 of the Revised Code;
 - (9) License to practice dietetics and limited permit to practice dietetics pursuant to section 4759.06 of the Revised Code;
 - (10) Certificate to practice as an anesthesiologist assistant pursuant to section 4760.04 of the Revised Code;
 - (11) License to practice respiratory care and limited permit to practice respiratory care pursuant to section 4761.05 of the Revised Code;
 - (12) ~~Certificate to practice as an oriental medicine practitioner pursuant to section 4762.03 of the Revised Code;~~

*** DRAFT - NOT YET FILED ***

- ~~(13)~~(12) License to practice as an acupuncturist pursuant to section 4762.03 of the Revised Code;
- ~~(14)~~(13) License to practice as a radiologist assistant pursuant to section 4774.04 of the Revised Code;
- ~~(15)~~(14) License to practice as a genetic counselor pursuant to section 4778.05 of the Revised Code;
- ~~(16)~~(15) Supervised practice license as a genetic counselor pursuant to section 4778.08 of the Revised Code;
- ~~(17)~~(16) Temporary expedited license for members of the military and spouses who are licensed in another jurisdiction pursuant to section 4743.04 of the Revised Code.

(D) The board authorizes the secretary and supervising member of the board to do the following:

- (1) Grant a waiver pursuant to the provisions of rule 4731-6-05 of the Administrative Code
- (2) Determine graduate medical education equivalency pursuant to section 4731.09 of the Revised Code
- (3) Determine whether an applicant has demonstrated fitness to resume practice due to inactivity under the applicable provisions of the Revised Code and Administrative Code.

(E) In the interest of operational efficiency, the secretary and supervising member of the board may approve the use of protocols whereby, if the deputy director of licensure, or the deputy director's designee, finds that the parameters of an approved protocol are met:

- (1) A waiver pursuant to the provisions of rule 4731-6-05 may be deemed granted
- (2) It may be deemed that an applicant's education, post-graduate medical training, experience, or other qualifications, is equivalent to the graduate medical education requirements set forth in section 4731.09 of the Revised Code.
- (3) It may be deemed that an applicant has demonstrated fitness to resume practice due to inactivity under the applicable provisions of the Revised Code and Administrative Code.

*** DRAFT - NOT YET FILED ***

~~D~~(F) An application for a license or certificate that is ineligible for routine authorization under this rule will be referred to the board for determination of whether an applicant shall be granted a license. An affirmative vote of not fewer than six members of the board is necessary for issuance of a license or certificate pursuant to an application that is not eligible for routine authorization.

~~E~~(G) Notwithstanding the provisions of this rule, the board may designate the referral of any class of applications to the board for approval. The secretary, supervising member, or deputy director for licensure may refer any individual application to the board for approval.

From: rbeck3@woh.rr.com
To: Anderson_Kimberly
Subject: RE: December eNews from the State Medical Board of Ohio
Date: Saturday, December 18, 2021 5:51:42 AM

I reviewed the proposed changes and they seem reasonable.

From: State Medical Board of Ohio <contact@med.ohio.gov>
Sent: Friday, December 17, 2021 6:09 PM
To: rbeck3@woh.rr.com

Subject: December eNews from the State Medical Board of Ohio



December 2021 eNews

Updates & important information from the State Medical Board of Ohio

PROPOSED RULES Seeking comments on the Medical Board's initial review of an internal management rule

The State Medical Board of Ohio seeks public input on proposed rules. For internal management rules, public input is sought after the Medical Board has conducted its initial review of rules prior to formally filing.

At this time, public comment is being sought on the proposed language for the following rule. The rule title is a link to the rule(s) and a memo explaining the proposed action.

State Medical Board Metrics

[Rule 4731-30-03 Approval of licensure applications Proposed to Amend Initial circulation memo](#)

Deadline for submitting comments: December 30

Comments to: Kimberly Anderson, State Medical Board of Ohio
Kimberly.Anderson@med.ohio.gov

From: [Anderson, Kimberly](#)
To: [Sarah Tope](#)
Subject: RE: What is the goal???
Date: Monday, December 20, 2021 2:23:00 PM

Good afternoon,

Thank you for your comment to Rule 4731-30-03, Ohio Administrative Code. This is an internal management rule that is formalizing the process for approving license applications so that they can be done in a more efficient manner. Your comment will be shared with the Medical Board.

Kimberly Anderson
Chief Legal Counsel
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-7207
c: 614-230-9077
Kimberly.Anderson@med.ohio.gov

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-----Original Message-----

From: Sarah Tope <sarahleighlmt@gmail.com>
Sent: Saturday, December 18, 2021 4:46 AM
To: Anderson, Kimberly <Kimberly.Anderson@med.ohio.gov>
Subject: What is the goal???

I am concerned with the actual goal of this addendum. I'm not aware of the secretary and the supervisors of the board so alarmed as to what this implies or what is it's purpose or goal.

Thank you for your time,
Sarah

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MEMORANDUM

TO: Betty Montgomery, President
Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Controlled Substance Prescribing Rules- 4731-11-03, 4731-11-04, 4731-11-04.1

DATE: December 29, 2021

The above referenced rules have been pending with CSI for some time while comments from interested parties were gathered and reviewed. For Rule 4731-11-03, Dr. Schottenstein proposed several changes that update the terminology and streamline the rule requirements. In addition, paragraph (B) was reviewed in light of the recently passed HB 122 regarding telehealth to incorporate flexibility for prescribers to utilize telehealth where appropriate. Since paragraph (B)(1)(b) states that an “appropriate” physical examination should be performed, there is flexibility that the examination could be performed via telehealth so long as the statutory requirements of HB 122 are met.

At the meeting of the Board in October 2021, the Board voted to move forward with changes to Rules 4731-11-04 and 04.1, to develop a rule draft that allows for the chronic use of phentermine, a Schedule IV controlled substance for weight loss with rule requirements that prevent overprescribing, abuse and diversion.

Attached please find a first draft of the revised weight loss rule which eliminates the 12 week prescribing limit and the requirement to strictly follow the FDA labeling requirement. I added provisions so that physician assistants could prescribe, combined the short term and chronic weight management rules, allowed for flexibility for telehealth visits, and added some interim requirements when the prescribing extends past 3 months.

In light of the fact that the rules deal with prescribing and are applicable to physician assistants, the draft rules need to be reviewed by the Physician Assistant Policy Committee before updating the CSI filing. The next PAPC meeting is scheduled for February 4, 2022.

Recommended Action: Review proposed amended rules, provide feedback for any changes, and approve presentation of the drafts to the Physician Assistant Policy Committee scheduled for February 4, 2022.

*** DRAFT - NOT YET FILED ***

4731-11-03

Utilization of anabolic steroids, schedule II controlled substance cocaine hydrochloride, and schedule II controlled substance stimulants.

(A) A physician shall not:

- (1) Utilize anabolic steroids, growth hormones, testosterone or its analogs, human chorionic gonadotropin ("HCG"), or other hormones for the purpose of enhancing athletic ability.
- (2) Utilize the schedule II controlled substance cocaine hydrochloride for a purpose other than one of the following:
 - (a) As a topical anesthetic in situations in which it is properly indicated; or
 - (b) For in-office diagnostic testing for pupillary disorders.
- (3) Utilize a schedule II controlled substance stimulant in any of the following circumstances:
 - (a) For purposes of weight reduction or control;
 - (b) When the physician knows or has reason to believe that a recognized contra-indication to its use exists; or
 - (c) In the treatment of a patient who the physician knows or should know is pregnant, except if the following criteria are met:
 - (i) After the physician's medical assessment the physician and patient determine that the benefits of treating the patient with a schedule II controlled substance stimulant outweigh the risks, and
 - (ii) The basis for the determination is documented in the patient record.

(B) Utilizing a schedule II controlled subtancesubstance stimulant:

- (1) Before initiating treatment utilizing a schedule II controlled substance stimulant, the physician shall perform all of the following:
 - (a) Obtain a thorough history;

*** DRAFT - NOT YET FILED ***

- (b) Perform an appropriate physical examination and mental status examination of the patient; and
- (c) Rule out the existence of any recognized contra-indications to the use of the controlled ~~substance~~substance stimulant to be utilized.

(2) A physician may utilize a schedule II controlled substance stimulant only for one of the following purposes:

- (a) The treatment of narcolepsy, idiopathic hypersomnia, and hypersomnias due to medical conditions known to cause excessive sleepiness;
- (b) The treatment of ~~abnormal behavioral syndrome~~ (attention deficit hyperactivity disorder, ~~hyperkinetic syndrome~~), and/or related disorders;
- (c) The treatment of major or mild neurocognitive disorder due to traumatic brain injury or substance/medication-induced major or mild neurocognitive disorder; drug induced or trauma induced brain dysfunction;
- ~~(d) The differential diagnostic psychiatric evaluation of depression;~~
- ~~(e) The treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as antidepressants;~~
- ~~(f) As adjunctive therapy in the treatment of the chronic pain, as defined in rule 4731-11-01 of the administrative code, following:~~
 - ~~(i) Chronic severe pain;~~
 - ~~(ii) Closed head injuries;~~
 - ~~(iii) Cancer related fatigue;~~
 - ~~(iv) Fatigue experienced during the terminal stages of disease;~~
 - ~~(v) Depression experienced during the terminal stages of disease; or~~
 - ~~(vi) Intractable pain, as defined in rule 4731-21-01 of the Administrative Code.~~

*** DRAFT - NOT YET FILED ***

~~§(f)~~ The treatment of binge eating disorder.

(3) Upon ascertaining or having reason to believe that the patient has a history of or shows a propensity for alcohol or drug abuse, or that the patient has consumed or disposed of any controlled substance other than in strict compliance with the treating physician's directions, the physician shall perform both of the following;

(a) Reappraise the desirability of continued utilization of schedule II controlled substance stimulants and shall document in the patient record the factors weighed in deciding to continue their use; and

(b) Actively monitor such patient for signs and symptoms of drug abuse and drug dependency.

(C) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(2) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code;

(3) "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

4731-11-04 Controlled substances-Utilization of short term anorexiants for the treatment of obesityweight reduction.

(A) A prescriberphysician may shall utilize a schedule III or IV controlled substance short term anorexiants for the treatment of obesitypurposes of weight reduction only if it has an F.D.A. approved indication for this purpose and then only in accordance with all of the provisions of this rule.

(B) Before initiating treatment for obesity weight reduction utilizing any schedule III or IV controlled substance short term anorexiants, the prescriberphysician shall complete all of the following requirements:

(1) The prescriberphysician shall review the prescriber'sphysician's own records of prior treatment or review the records of prior treatment by another treating physician, prescriber, dieticiandietitian, or weight-loss program to determine the patient's past efforts to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, intensive behavioral therapy, and exercise, without the utilization of controlled substances, and that the treatment has been ineffective.

(2) The prescriberphysician shall complete and document the findings of all of the following:

(a) Obtain a thorough history;

(b) Perform an appropriate physical examination of the patient;

(c) Determine the patient's BMI;

(d) Rule out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(e) Assess and document the patient's freedom from signs of drug or alcohol abuse, and the presence or absence of contraindications and adverse side effects.

(f) Access OARRS for the patient's prescription history during the preceding twelve month period and document in the patient's record the receipt and assessment of the report received; and

(g) Develop and record in the patient record a treatment plan that includes, at a minimum, a diet and exercise program for weight loss.

(3) The prescriberphysician shall not initiate treatment utilizing a controlled substance for the treatment of obesityshort term anorexiants upon ascertaining or having reason to believe any one or more of the following:

(a) The patient has a history of or shows a propensity for alcohol or drug abuse, or has made any false or misleading statement to the prescriberphysician related to the patient's use of drugs or alcohol;

(b) The patient has consumed or disposed of any controlled substance other than in strict compliance with the treating prescriber'sphysician's directions;

(c) The prescriber physician knows or should know the patient is pregnant;

(d) The patient has a BMI of less than thirty, unless the patient has a BMI of at least twenty seven with comorbid factors, including Type 2 diabetes, cardiovascular disease, hypertension, hyperlipidemia, obstructive sleep apnea, nonalcoholic fatty liver disease, osteoarthritis, or major depression;

(e) The patient has any condition that would contraindicate the use of the controlled substance to be utilized;

(f) The review of the prescriber's physician's own records of prior treatment or review of records of prior treatment provided by another physician, prescriber, dietitian, or weight-loss program indicate that the patient made less than a substantial good faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, intensive behavioral therapy, and exercise without the utilization of controlled substances.

(C) A prescriber physician may utilize a schedule III or IV controlled substance short term anorexiant, that bears appropriate F.D.A. approved labeling for weight loss, in the treatment of obesity as an adjunct, in a regimen of weight reduction based on caloric restriction, provided that:

(1) The prescriber physician shall assess personally meet face to face with the patient, at a minimum, every thirty days for the first three months of utilization of when controlled substances are being utilized for weight reduction, and shall record in the patient record information demonstrating the patient's continuing efforts to lose weight, the patient's dedication to the treatment program and response to treatment, and the presence or absence of contraindications, adverse effects, and indicators of possible substance abuse that would necessitate cessation of treatment utilizing controlled substances.

(2) The prescriber shall not dispense or prescribe more than a 30-day supply of controlled substances, at one time, for weight reduction or chronic weight management.

(3) The prescriber shall not dispense or prescribe additional controlled substances to treat obesity for a patient who has not achieved a weight loss of at least 5% of the patient's initial weight, during the initial three months of treatment using controlled substances to treat obesity.

(4) The prescriber may dispense or prescribe controlled substances to treat obesity when the prescriber observes and records that the patient significantly benefits from the controlled substances and has no serious adverse effects related to the drug regimen. A patient significantly benefits from the controlled substances when weight is reduced or when weight loss is maintained and any existing co-morbidity is reduced.

(a) The prescriber shall assess the patient at least once every three months and shall check the patient's weight, blood pressure, pulse, heart and lungs. The findings shall be entered in the patient's record.

(b) For the continuation of Schedule III or IV controlled substances designated as FDA short term use controlled substances beyond three months, the patient must continue to lose weight during the active weight reduction treatment or maintain goal weight. The prescriber shall document the patient's weight loss or maintenance in the record.

(c) The prescriber shall document the patient's progress with the treatment plan.

(d) The prescriber shall access OARRS in accordance with rules 4731-11-11 and 4730-2-10 of the Administrative Code.

~~(2) The controlled substance short term anorexiant is prescribed strictly in accordance with the F.D.A. approved labeling. If the F.D.A. approved labeling of the controlled substance short term anorexiant being utilized for weight loss states that it is indicated for use for "a few weeks," the total course of treatment using that controlled substance shall not exceed twelve weeks. That time period includes any interruption in treatment that may be permitted under paragraph (C)(3) of this rule.~~

~~(3) A physician shall not initiate a course of treatment utilizing a controlled substance short term anorexiant for purposes of weight reduction if the patient has received any controlled substance for purposes of weight reduction within the past six months. However, the physician may resume utilizing a controlled substance short term anorexiant following an interruption of treatment of more than seven days if the interruption resulted from one or more of the following:~~

~~(a) Illness of or injury to the patient justifying a temporary cessation of treatment; or~~

~~(b) Unavailability of the physician; or~~

~~(c) Unavailability of the patient, if the patient has notified the physician of the cause of the patient's unavailability.~~

~~(4) After initiating treatment, the physician may elect to switch to a different controlled substance short term anorexiant for weight loss based on sound medical judgment, but the total course of treatment for any short term anorexiant combination of controlled substances each of which is indicated for "a few weeks" shall not exceed twelve weeks.~~

~~(5) The prescriber physician shall not initiate or shall discontinue utilizing all controlled substances short term anorexiants for purposes of weight reduction immediately upon ascertaining or having reason to believe:~~

~~(a) That the patient has a history of or shows a propensity for alcohol or drug abuse, or has made any false or misleading statement to the prescriber physician relating to the patient's use of drugs or alcohol;~~

~~(b) That the patient has consumed or disposed of any controlled substance other than in strict compliance with the treating physician's directions;~~

~~(c) That the patient has failed to lose weight while under treatment with a controlled substance or controlled substances for weight reduction over a period of thirty days during the current course of treatment, which determination shall be made by weighing the patient at least every thirtieth day, except that a patient who has never before received treatment for obesity utilizing any controlled substance who fails to lose weight during the first thirty days of the first such treatment attempt may be treated for an additional thirty days;~~

~~(d) That the patient has repeatedly failed to comply with the prescriber's physician's treatment recommendations;~~

~~(e) That the patient demonstrates any signs that the controlled substance is not safe for or well tolerated by the patient; or~~

~~(f) That the prescriber physician knows or should know the patient is pregnant.~~

(D) A violation of any provision of this rule, as determined by the board, shall constitute the following:

(1) For a physician:

(a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section ~~4731.22~~ of the Revised Code;

(b) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section ~~4731.22~~ of the Revised Code; and

(c) "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section ~~4731.22~~ of the Revised Code.

(2) For a physician assistant:

(a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section ~~4730.25~~ of the Revised Code;

(b) "Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section ~~4730.25~~ of the Revised Code; and

(c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section ~~4730.25~~ of the Revised Code.

Proposed to Rescind

~~4731-11-04.1 Controlled substances: utilization for chronic weight management.~~

~~(A) A physician shall determine whether to utilize a controlled substance anorexiant for purposes of chronic weight management as an adjunct to a reduced calorie diet and increased physical activity. The determination shall be made in compliance with the provisions of this rule.~~

~~(1) Before initiating treatment utilizing any controlled substance anorexiant, the physician shall complete all of the following requirements:~~

~~(a) Obtain a thorough history;~~

~~(b) Perform a physical examination of the patient;~~

~~(c) Determine the patient's BMI;~~

~~(d) Review the patient's attempts to lose weight in the past for indications that the patient has made a substantial good faith effort to lose weight in a regimen for weight reduction based on caloric restriction, nutritional counseling, intensive behavioral therapy, and exercise without the utilization of controlled substance anorexiants. The review shall include available records from the physician's own prior treatment of the patient, prior treatment provided by another physician, prior participation in a weight loss program, or prior treatment by a dietitian;~~

~~(e) Rule out the existence of any recognized contraindications to the use of the controlled substance anorexiant to be utilized;~~

~~(f) Assess and document the patient's freedom from signs of drug or alcohol abuse;~~

~~(g) Access OARRS and document in the patient's record the receipt and assessment of the information received; and~~

~~(h) Develop and record in the patient record a treatment plan that includes, at a minimum, a diet and exercise program for weight loss.~~

~~(2) The physician shall not initiate treatment utilizing a controlled substance anorexiant upon ascertaining or having reason to believe any one or more of the following:~~

~~(a) The patient has a history of, or shows a propensity for, alcohol or drug abuse, or has made any false or misleading statement to the physician or physician assistant relating to the patient's use of drugs or alcohol;~~

~~(b) The patient has consumed or disposed of any controlled substance other than in strict compliance with the treating physician's directions; or~~

~~(c) The physician knows or should know the patient is pregnant.~~

~~(3) The physician shall not initiate treatment utilizing a controlled substance anorexiant if any of the following conditions exist:~~

(a) The patient has an initial BMI of less than thirty, unless the patient has an initial BMI of at least twenty seven with comorbid factors.

(b) The review of the patient's attempts to lose weight in the past indicates that the patient has not made a substantial good faith effort to lose weight in a regimen for weight reduction based on caloric restriction, nutritional counseling, intensive behavioral therapy, and exercise without the utilization of controlled substance anorexiants. The review shall include available records from the physician's own prior treatment of the patient, prior treatment provided by another physician, prior participation in a weight loss program, or prior treatment by a dietitian.

(4) The physician shall prescribe the controlled substance anorexiant strictly in accordance with the F.D.A. approved labeling;

(5) Throughout the course of treatment with any controlled substance anorexiant the physician shall comply with rule 4731-11-11 of the Administrative Code and the physician assistant shall comply with rule 4730-2-10 of the Administrative Code.

(B) A physician shall provide treatment utilizing a controlled substance anorexiant for weight management in compliance with paragraph (A) of this rule and the following:

(1) The physician shall meet face to face with the patient for the initial visit and at least every thirty days during the first three months of treatment. If the F.D.A. approved labeling for the controlled substance anorexiant requires induction of treatment at one dose and an increase to a higher dose after a stated period of less than thirty days, the physician may give the patient a prescription for the higher dose at the initial visit and the first thirty day period then starts from the date the prescription for the higher dose may be filled.

(2) Following the initial visit and two follow up visits, the treatment may be continued under one of the following means:

(a) The physician may authorize refills for the controlled substance anorexiant up to five times within six months after the initial prescription date;

(b) The treatment may be provided by a physician assistant in compliance with this rule, the supervisory plan or policies of the healthcare facility, and the physician assistant formulary adopted by the board.

(3) When treatment for chronic weight management is provided by a physician assistant, the following requirements apply:

(a) The supervising physician shall personally review the medical records of each patient to whom the physician assistant has prescribed a controlled substance anorexiant following each visit; and

(b) A physician assistant shall not initiate utilization of a different controlled substance anorexiant, but may recommend such change for the supervising physician's initiation.

(4) A physician shall discontinue utilizing any controlled substance anorexiant immediately upon ascertaining or having reason to believe:

(a) That the patient has repeatedly failed to comply with the physician's treatment recommendations; or

(b) That the patient is pregnant.

(c) A violation of any provision of this rule, as determined by the board, shall constitute the following as applicable:

(1) For a physician:

(a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(b) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; and

(c) "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(2) For a physician assistant:

(a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code;

(b) "Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section 4730.25 of the Revised Code; and

(c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4730.25 of the Revised Code.

Effective: 12/31/2015

Five Year Review (FYR) Dates: 12/31/2020

Promulgated Under: 119.03

Statutory Authority: 4731.05

Rule Amplifies: 4731.22



MEMORANDUM

TO: Betty Montgomery, President, State Medical Board of Ohio
Members, State Medical Board of Ohio

FROM: James Roach, Board Attorney

DATE: January 5, 2022

RE: Use of Confidential, Non-disciplinary Letters to Resolve Board Complaints

The Board currently utilizes caution letters to admonish licensees for low level violations of the Board's laws and rules and to offer suggestions as to how licensees may remediate deficiencies in their practice. These letters are confidential and non-disciplinary, and the suggestions contained therein are optional.

As discussed during the Board retreat in October 2021, Board staff is proposing additional tools that are gradations of the Board's current caution letter to better effectuate remediation amongst Board licensees. Specifically, Board staff is proposing the utilization of the following tools:

1. Education letters – confidential, non-disciplinary letters that clearly express an intent by the Board to educate the licensee on best practices in hopes of improving their practice, as opposed to addressing a disciplinary matter related to minimum standards of care or rules violation.
2. Caution letters – same as currently exist.
3. Caution letters with monitoring for compliance - confidential, non-disciplinary letters that identify low level violations of the Board's laws and rules and offer suggestions as to how licensees may remediate deficiencies in their practice, with the understanding that the Board will be following-up with the licensee within an identified period of time to determine if there have been positive developments since the receipt of this letter. Examples of positive developments include completion of recommended CME's with communication from the licensee to the Board as to how the licensee intends on incorporating lessons learned within their practice and follow-up records review that illustrates changes in practice. If that follow-up inquiry still reveals concerns, either a continuation of the old concerns or identification of new concerns, then the Board still retains jurisdiction to utilize any of its other tools for resolving complaints, as directed by the Secretary and Supervising Member of the Board.

In developing these options, Board staff sought to address the fact that the Board currently lacks a mechanism to advise licensees on best practices when reviewing their care, as well as develop a process to re-engage with licensees after the Board makes recommendations to determine whether the letter had the intended impact on the licensee's practice. Through these efforts, the Board hopes to improve care for the public and avert more serious violations of the Board's laws and rules.

Requested Action: Review proposed options, provide comments, if any, and authorize implementation by Board staff and the Secretary and Supervising Member of the Board.



MEMORANDUM

TO: Betty Montgomery, President, State Medical Board of Ohio
Members, State Medical Board of Ohio

FROM: Nathan T. Smith, Senior Legal and Policy Counsel

DATE: January 6, 2022

RE: Non-Disciplinary, Voluntary Permanent Retirement Proposal

The Board has previously provided feedback on the concept of non-disciplinary voluntary, permanent retirement. The attached draft legislative language authorizing voluntary permanent retirement for Medical Board licensees incorporates the Board's feedback on the concept and is presented for your review and further feedback.

The NPDB Guidebook (October 2018) also provided guidance for crafting this non-disciplinary retirement proposal as it states “[t]he voluntary relinquishment of a practitioner's license for personal reasons such as retirement or illness is not reportable to the NPDB if no other action or investigation is in progress. Only the surrender of the license, while under investigation or in return for not conducting an investigation, is reportable.” Id. At E-70.

The costs of the proposal will include some administrative costs in application processing and potential investigation. The benefits of the proposal include: (1) providing a non-disciplinary way to retire for licensees beginning to face mental or physical illness that could prevent them in the future from practicing their licensed occupation competently; (2) reduction of Medical Board complaints and resources expended for investigating potential R.C. 4731.22(B)(19) violations; and (3) most importantly, protecting the public by allowing a licensee to voluntarily, permanently retire before there is a decline in the quality of care provided.

Action requested:

- (1) Discuss and provide feedback on the draft language.
- (2) Discuss whether the concept in the draft language makes the emeritus registration rules in Ohio Administrative Code Chapter 4731-22 redundant and unnecessary.

Draft Proposed section 4731.283 Voluntary Permanent Retirement

(A) As used in this section:

- (1) "Licensee means an individual holding an active, unrestricted license under Chapters 4730, 4731, 4759, 4760, 4761, 4762, 4774, or 4778 of the Revised Code. Licensee does not include holders of limited permits or training certificates.
- (2) " Voluntary Permanent Retirement" is a licensure status that means a licensee has voluntarily applied for and received, through Board approval, the permanent retirement of their license without ability to renew, reinstate, or restore that license; obtain a new license; or practice under that license.

(B) To qualify for voluntary permanent retirement, the licensee shall meet the following requirements:

- (a) the licensee has retired from the practice of the licensed occupation in this state;
- (b) the licensee does not have criminal charges pending;
- (c) the licensee is not the subject of a pending investigation or discipline from a regulatory agency of this state, another state, or the United States;
- (d) the licensee does not have open complaints pending with the board; and
- (e) the licensee is not currently subject to this board's hearing, disciplinary, or compliance processes under the terms of a citation, notice of opportunity for hearing, board order, or consent agreement;

(C) A licensee of the board may voluntarily apply in writing for voluntary permanent retirement on a form provided by the board.

(D) The application for voluntary permanent retirement shall be processed by the Board in accordance with the following:

- (1) All application materials submitted to the board will be thoroughly investigated. The board may contact individuals, agencies, or organizations for information about applicants as the board deems necessary. As part of the application process, an applicant may be requested to appear before the board or a board representative to answer questions or provide additional information.
- (2) The board shall grant or deny the application for voluntary permanent retirement within 75 days from the receipt of a complete application.
- (3) Any applicant for voluntary permanent retirement to whom the board proposes to deny the voluntary permanent retirement shall be entitled to a hearing on the issue of such proposed denial in compliance with the provisions of Chapter 119. of the Revised Code.

(E) Absent fraud or dishonesty by the licensee in the application process for voluntary permanent retirement, the board shall no longer have jurisdiction to take disciplinary action against the licensee if the voluntary permanent retirement is granted.

(F) A person who has been granted voluntary permanent retirement from a board licensed occupation may continue to represent themselves as that occupation title only if the word "retired" immediately precedes the title of the occupation and the person does not engage in the practice of the occupation.



MEMORANDUM

TO: Betty Montgomery, President, State Medical Board of Ohio
Members, State Medical Board of Ohio

FROM: Nathan T. Smith, Senior Legal and Policy Counsel

DATE: January 6, 2022

RE: Telehealth rules implementing new telehealth law

Governor DeWine signed Sub. H.B. 122 Telehealth Services into law on December 22, 2021, making the law effective on or about March 22, 2022. R.C. 4743.09(B)(1) authorizes the Medical Board to adopt rules necessary to implement the new law. This memo summarizes several proposed rules for initial circulation which are attached along with the new statute.

The final language in Sub. H.B. 122 is a result of working with the legislature to clarify that standard of care must be the same for telehealth and in-person visits, as well as to include some prescribing restrictions. Board staff met with many stakeholders in the months leading up to the final version of Sub. H.B. 122. The proposed rules capture the spirit of those discussions, as well as comply with the newly enacted law. More specific stakeholder comments will be gathered in initial circulation.

Proposed new rule 4731-37-01 Telehealth

This new rule will be the general telehealth rule for all Medical Board license types that are defined in the new statute as health care professionals who are legally authorized to perform telehealth services. This includes licensed physicians (MD, DO, DPM), physician assistants, dietitians, respiratory care professionals, and genetic counselors.

- Paragraph (A) provides definitions including telehealth services, synchronous communication technology, asynchronous communication technology, and remote monitoring device.
- Paragraph (B) of the rule provides the foundation and roadmap for the telehealth rule. First and foremost, it requires that the “standard of care for a telehealth visit is the same as the standard of care for an in-person visit.”
- Because R.C. 4743.09(C) allows a health care professional to use synchronous or asynchronous technology to provide telehealth services if the standard of care is satisfied, paragraphs (B)(3) and (B)(4) provide structure to the selection of a telehealth services technology to meet the standard of care for each individual patient’s medical condition. These rule provisions provide for escalation of care and/or referral of care if the standard of care cannot be met through the telehealth communication technology selected.

- Paragraph (C) requires that the health care professional comply with all standard of care requirements including but not limited to those listed in this paragraph such as verification of name and location of patient, informed consent, privacy and security, documentation, and evaluation of the patient.

- Paragraph (D) provides requirements for a health care professional to perform telehealth services involving consultation with another health care professional. This part of the rule is necessitated by the statutory definition of telehealth services which includes the consultation of one health care professional by another health care professional regarding a patient. See R.C. 4743.09(A)(6).

- Paragraph (E) explains the requirements related to the prescribing of non-controlled and controlled prescription drugs. In short, a physician or physician assistant with prescriptive authority may prescribe a drug that is a non-controlled substance through the provision of telehealth by complying with all requirements of this general telehealth rule. For controlled substance prescriptions, this rule requires compliance with all requirements of rule 4731-37-01, federal law governing prescriptions for controlled drugs, and all requirements in proposed amended rule 4731-11-09.

- Paragraph (F) implements two statutory provisions relevant only to physicians, physician assistants, and APRNs. The new statutory provision, R.C. 4743.09(C)(5), allows these health care professionals to: (1) “provide telehealth services to a patient located outside of this state if permitted by the laws of the state in which the patient is located” and (2) “provide telehealth services through the use of medical devices that enable remote monitoring, including such activities as monitoring a patient's blood pressure, heart rate, or glucose level.”

- Paragraph (G) provides the enforcement provisions for each type of health care professional for violations of this proposed rule.

Amended Ohio Administrative Code rule 4731-11-09

This proposed rule substantially amends the current rule regarding prescribing to persons not seen and transforms this rule into the rule for controlled substance and telehealth prescribing. The prescribing of non-controlled drugs as a telehealth service is addressed in proposed rule 4731-37-01(E).

For physician and physician assistant prescribing of controlled substances, paragraphs (A) and (B) of the amended rule require that the physician or physician assistant must comply with federal law and the requirements of OAC 4731-37-01 (if provided via telehealth). The new telehealth law in R.C. 4743.09(B)(2) also requires additional changes to the rule as it states:

(2)(a) Except as provided in division (B)(2)(b) of this section, the rules adopted by a health care professional licensing board under this section shall establish a standard of care for telehealth services that is equal to the standard of care for in-person services.

(b) Subject to division (B)(2)(c) of this section, a board may require an initial in-person visit prior to prescribing a schedule II controlled substance to a new patient, equivalent to applicable state and federal requirements.

(c)(i) A board shall not require an initial in-person visit for a new patient whose medical record indicates that the patient is receiving hospice or palliative care, who is receiving medication assisted treatment or any other medication for opioid-use disorder, who is a patient with a mental health condition, or who, as determined by the clinical judgment of a health care professional, is in an emergency situation.

(ii) Notwithstanding division (B) of section 3796.01 of the Revised Code, medical marijuana shall not be considered a schedule II controlled substance.

To implement these provisions regarding controlled substance prescribing, in-person visits, and telehealth, the proposed amended rule 4731-11-09 states:

(C) The physician or physician assistant shall conduct a physical examination of a new patient as part of an initial in-person visit before prescribing a schedule II controlled substance to a new patient except as provided in paragraph (D) of this rule.

(D) As an exception to paragraph (C) of this rule, a physician or physician assistant may prescribe a controlled substance to a new patient as part of the provision of telehealth services for any of the following patient medical conditions and situations:

(1) The medical record of a new patient indicates that the patient is receiving hospice or palliative care;

(2) The patient has a substance use disorder, and the controlled substance is FDA approved for and prescribed for medication assisted treatment or to treat opioid use disorder.

(3) The patient has a mental health condition and the controlled substance prescribed is prescribed to treat that mental health condition; or

(4) The physician or physician assistant determines in their clinical judgment that the new patient is in an emergency situation provided that the following occurs:

(i) the physician or physician assistant prescribes only the amount of a schedule II controlled substance to cover the duration of the emergency or an amount not to exceed a three-day supply whichever is shorter;

(ii) after the emergency situation ends, the physician or physician assistant conducts the physical examination as part of an initial visit before any further prescribing of a drug that is a schedule II controlled substance.

(E) When prescribing a controlled substance through the provision of telehealth services under one of the exceptions in paragraph (D) of this rule, the physician or physician assistant shall document one of the reasons listed in paragraph (D) for the prescribing in the medical record of the new patient in addition to the documentation already required to meet the standard of care in rule 4731-37-01 of the Administrative Code.

Finally, this amended rule also includes enforcement provisions for violations of the rule by a physician or a physician assistant with prescriptive authority.

Rules incorporating the new telehealth rule OAC 4731-37-01

The following proposed rules for physician assistants, dietitians, respiratory care professionals, and genetic counselors incorporate OAC 4731-37-01 into their respective chapters: Rule 4730-1-07

Miscellaneous provisions, 4730-2-07 Standards for Prescribing, Rule 4759-11-01 Miscellaneous Provisions, Rule 4761-15-01 Miscellaneous provisions, and Rule 4778-1-06 Miscellaneous provisions.

Action Requested:

- (1) Discuss and approve proposed rules for initial circulation.
- (2) Refer proposed rules for discussion to Physician Assistant Policy Committee, Dietetics Advisory Council, and Respiratory Care Advisory Council.

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4731-37-01

Telehealth.

(A) As used in Chapters 4730, 4731, 4759, 4761, and 4778 of the Administrative Code:

- (1) Telehealth services means health care services provided through the use of information and communication technology by a health care professional licensed in Ohio, within the professional's scope of practice, who is located at a site other than the site where the patient is receiving the services or the site where another health care professional with whom the provider of the services is consulting regarding the patient is located.
- (2) Synchronous communication technology means audio and/or video technology that permits two-way, interactive, real-time electronic communication between the health care professional and the patient or between the health care professional and the consulting health care professional regarding the patient.
- (3) Asynchronous communication technology, also called store and forward technology, means the transmission of a patient's stored clinical data from an originating site to the site where the health care professional is located. The health care professional at this distant site can review the stored clinical data at a later time from when the data is sent and without the patient being present. Stored clinical data that may be transmitted via asynchronous communication technology means video clips, sound/audio files, and photo images that may be sent along with electronic records and written records about the patient's medical condition. Asynchronous communication technology does not include telephone calls, images transmitted via facsimile machines, and text messages without visualization of the patient such as in electronic mail.
- (4) Remote monitoring device means a medical device cleared or approved by the United States food and drug administration for the specific purpose which the health care professional is using it and which reliably transmits data electronically and automatically.
- (5) Health care professional means:
 - (a) a physician assistant licensed under Chapter 4730. of the Revised Code;
 - (b) a physician licensed under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
 - (c) a dietitian licensed under Chapter 4759. of the Revised Code;
 - (d) a respiratory care professional licensed under Chapter 4761. of the Revised Code; or

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(e) a genetics counselor licensed under Chapter 4778. of the Revised Code.

(6) "Certified nurse practitioner" means an advanced practice registered nurse who holds a current, valid license issued under Chapter 4723. of the Revised Code and is designated as a certified nurse practitioner in accordance with section 4723.42 of the Revised Code.

(7) "Informed consent" means a process of communication between a patient and health care professional discussing the risks and benefits of, and alternatives to, treatment through a remote evaluation that results in the patient's agreement or signed authorization to be treated through an evaluation conducted through appropriate technology, as specified in this rule, when the health care professional is in a location remote from the patient.

(B) A health care professional may provide telehealth services to a patient located in this state. The health care professional shall comply with all of the following requirements:

(1) The standard of care for a telehealth visit is the same as the standard of care for an in-person visit.

(2) The health care professional shall follow all standard of care requirements which include but are not limited to the standard of care requirements in paragraph (C) of this rule.

(3) The health care professional may provide the telehealth services through the use of synchronous or asynchronous communication technology provided that the standard of care for an in-person visit can be met for the patient and the patient's medical condition through the use of the technology selected.

(4) If a health care professional determines at any time during the provision of telehealth services that a telehealth visit will not meet the standard of care for the medical condition of the patient or if additional in-person care is necessary, the health care professional shall do all of the following:

(a) The health care professional shall immediately schedule the patient for an in-person visit with the health care professional and promptly conduct that visit or refer the patient for an in-person visit with one of the following licensed health care professionals who can provide the services in-person that are appropriate for the patient and the condition for which the patient presents:

(i) another health care professional with whom the health care professional has a cross-coverage agreement,

(ii) in the case of a physician, a physician assistant with whom the

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physician has a supervision agreement or a certified nurse practitioner with whom the physician has a standard care arrangement; or

(iii) in the case of a physician assistant, a physician with whom the physician assistant has a supervision agreement.

(b) The health care professional shall document the in-person visit or the referral in the patient's medical record.

(C) A health care professional must comply with all standard of care requirements to provide telehealth services to a patient including but not limited to:

(1) The health care professional shall verify the patient's identity and physical location in Ohio and communicate the health care professional's name and licensure information to the patient;

(2) The health care professional shall obtain the patient's informed consent for treatment through telehealth;

(3) The health care professional shall provide the telehealth services in a manner that complies with the privacy and security requirements for the patient and their protected health information required by the law of this state and federal law. Also, the health care professional shall ensure that any username or password information and any electronic communications between the health care professional and the patient are securely transmitted and stored.

(4) The health care professional shall request the patient's consent and, if granted, forward the medical record to the patient's primary care provider or other health care provider, if applicable, or refer the patient to an appropriate health care provider or health care facility;

(5) The health care professional shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care for an in-person visit, which may include portions of the evaluation having been conducted by other Ohio licensed healthcare providers acting within the scope of their professional license;

(6) The health care professional shall establish or confirm, as applicable, a diagnosis and treatment plan, which for those health care professionals designated as prescribers in section 4729.01 of the Revised Code, includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment;

(7) The health care professional shall promptly document in the patient's medical

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record the patient's informed consent to treatment through telehealth, pertinent history, evaluation, diagnosis, treatment plan, underlying conditions, any contraindications, and any referrals to appropriate health care providers, including primary care providers or health care facilities;

- (8) The health care professional shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider, or health care facility in accordance with the minimal standards of care;
- (9) The health care professional shall make the medical record of the visit available to the patient upon request.

(D) A health care professional must comply with the following requirements to provide telehealth services that involve consultation with another health care professional:

- (1) The referring health care profession shall obtain the informed consent of the patient before seeking the telehealth services consultation with the consulting health care professional;
- (2) The consulting health care professional must meet the licensure or certification requirements in division (C) of section 4743.09 of the Revised Code; and
- (3) The health care professionals involved in the consultation must have received and reviewed all medical records of the patient relevant to the medical condition which is the subject of the consultation before the consultation occurs.

(E) While providing telehealth services, a health care professional that is a physician or a physician assistant who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority shall comply with the following requirements regarding prescription drugs:

- (1) the physician or physician assistant may only prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is not a controlled substance to a patient through the provision of telehealth services by complying with all requirements of this rule;
- (2) the physician or physician assistant may only prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug to a patient that is a controlled substance through the provision of telehealth services by complying with the following requirements:
 - (a) federal law governing prescription drugs that are controlled substances;
 - (b) the requirements of this rule; and

(c) the requirements in rule 4731-11-09 of the Administrative Code.

(F) A health care professional that is a physician or physician assistant may provide the following additional telehealth services:

(1) A physician or physician assistant may provide telehealth services to a patient outside of this state if the physician or physician assistant confirms and documents in the medical record both of the following:

(a) the location of the patient; and

(b) that the laws of the state in which the patient is located permit the physician or physician assistant to provide telehealth services in that state.

(2) A physician or physician assistant may provide telehealth services through the use of remote monitoring devices provided that:

(a) the patient gives informed consent to the use of remote monitoring devices;

(b) the medical devices that enable remote monitoring have been cleared or approved by the United States food and drug administration for the specific purpose for which the physician or physician assistant are using it for the patient, and the remote monitoring devices otherwise comply with all federal requirements.

(G) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) For a physician:

(a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(b) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or

(c) "A departure from or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

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(2) For a physician assistant:

- (a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code;
- (b) "Failure to comply with the requirements of this chapter, Chapter 4731, of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section 4730.25 of the Revised Code; or
- (c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731, of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4730.25 of the Revised Code.

(3) For a dietitian:

- (a) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or the rules adopted by the board," as that clause is used in division (A)(1) of section 4759.07 of the Revised Code; or
- (b) "A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (A)(11) of section 4759.07 of the Revised Code.

(4) For a respiratory care professional:

- (a) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or the rules adopted by the board," as that clause is used in division (A)(7) of section 4761.09 of the Revised Code; or
- (b) "A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (A)(10) of section 4761.09 of the Revised Code.

(5) For a genetic counselor:

- (a) "Failure to comply with the requirements of this chapter, Chapter 4731, of the Revised Code, or any rules adopted by the board," as that clause is

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used in division (B)(2) of section 4778.14 of the Revised Code;

- (b) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731, of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4778.14 of the Revised Code; or
- (c) "A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established," as that clause is used in division (B)(4) of section 4778.14 of the Revised Code.

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4731-11-09

Controlled substance and telehealth prescribing.

(A) A physician or a physician assistant who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority must comply with federal law governing prescription drugs that are controlled substances to prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is a controlled substance to a person.

(B) When the physician or physician assistant, who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority, prescribes, personally furnishes, otherwise provides, or causes to be provided a prescription drug that is a controlled substance during the provision of telehealth services, the physician or physician assistant must comply with all requirements in rule 4731-37-01 of the Administrative Code.

(C) The physician or physician assistant shall conduct a physical examination of a new patient as part of an initial in-person visit before prescribing a schedule II controlled substance to the patient except as provided in paragraph (D) of this rule.

(D) As an exception to paragraph (C) of this rule, a physician or physician assistant may prescribe a controlled substance to a new patient as part of the provision of telehealth services for any of the following patient medical conditions and situations:

- (1) The medical record of a new patient indicates that the patient is receiving hospice or palliative care;
- (2) The patient has a substance use disorder, and the controlled substance is FDA approved for and prescribed for medication assisted treatment or to treat opioid use disorder.
- (3) The patient has a mental health condition and the controlled substance prescribed is prescribed to treat that mental health condition; or
- (4) The physician or physician assistant determines in their clinical judgment that the new patient is in an emergency situation provided that the following occurs:
 - (a) the physician or physician assistant prescribes only the amount of a schedule II controlled substance to cover the duration of the emergency or an amount not to exceed a three-day supply whichever is shorter;
 - (b) after the emergency situation ends, the physician or physician assistant conducts the physical examination as part of an initial in-person visit before any further prescribing of a drug that is a schedule II controlled substance.

(E) When prescribing a controlled substance through the provision of telehealth services

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under one of the exceptions in paragraph (D) of this rule, the physician or physician assistant shall document one of the reasons listed in paragraph (D) for the prescribing in the medical record of the new patient in addition to the documentation already required to meet the standard of care in rule 4731-37-01 of the Administrative Code.

(F) Nothing in this rule shall be construed to imply that one in-person physician examination demonstrates that a prescription has been issued for a legitimate medical purpose within the course of professional practice.

(G) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) For a physician:

(a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(b) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or

(c) "A departure from or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(2) For a physician assistant:

(a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code;

(b) "Failure to comply with the requirements of this chapter, Chapter 4731, of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section 4730.25 of the Revised Code; or

(c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731, of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4730.25 of the Revised Code.

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(H) This rule shall not apply to any prescribing situations specifically authorized by the Revised Code or Administrative Code.

(I) For purposes of this rule, "patient" means a person for whom the physician provides healthcare services or the person's representative.

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4731-11-09

Prescribing to persons not seen by the physician.

TO BE RESCINDED

- (A) Except as provided in paragraph (D) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any controlled substance to a person on whom the physician has never conducted a physical examination.
- (B) Except as provided in paragraph (C) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any prescription drug that is not a controlled substance to a person on whom the physician has never conducted a physical examination.
- (C) A physician may prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is not a controlled substance to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician by complying with all of the following requirements:
 - (1) The physician shall establish the patient's identity and physical location;
 - (2) The physician shall obtain the patient's informed consent for treatment through a remote examination;
 - (3) The physician shall request the patient's consent and, if granted, forward the medical record to the patient's primary care provider or other health care provider, if applicable, or refer the patient to an appropriate health care provider or health care facility;
 - (4) The physician shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care, which may include portions of the evaluation having been conducted by other Ohio licensed healthcare providers acting within the scope of their professional license;
 - (5) The physician shall establish or confirm, as applicable, a diagnosis and treatment plan, which includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment;
 - (6) The physician shall document in the patient's medical record the patient's consent to treatment through a remote evaluation, pertinent history, evaluation, diagnosis, treatment plan, underlying conditions, any

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contraindications, and any referrals to appropriate health care providers, including primary care providers or health care facilities;

(7) The physician shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider, or health care facility in accordance with the minimal standards of care;

(8) The physician shall make the medical record of the visit available to the patient;

(9) The physician shall use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in-person visit.

(D) A physician may prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is a controlled substance to a person on whom the physician has not conducted a physical examination and who is at a location remote from the physician in any of the following situations:

(1) The person is an active patient, as that term is defined in paragraph (D) of rule 4731-11-01 of the Administrative Code, of an Ohio licensed physician or other health care provider who is a colleague of the physician and the drugs are provided pursuant to an on call or cross coverage arrangement between them and the physician complies with all steps of paragraph (C) of this rule;

(2) The patient is physically located in a hospital or clinic registered with the United States drug enforcement administration to personally furnish or provide controlled substances, when the patient is being treated by an Ohio licensed physician or other healthcare provider acting in the usual course of their practice and within the scope of their professional license and who is registered with the United States drug enforcement administration to prescribe or otherwise provide controlled substances in Ohio.

(3) The patient is being treated by, and in the physical presence of, an Ohio licensed physician or healthcare provider acting in the usual course of their practice and within the scope of their professional license, and who is registered with the United States drug enforcement administration to prescribe or otherwise provide controlled substances in Ohio.

(4) The physician has obtained from the administrator of the United States drug enforcement administration a special registration to prescribe or otherwise provide controlled substances in Ohio.

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(5) The physician is the medical director, hospice physician, or attending physician for a hospice program licensed pursuant to Chapter 3712. of the Revised Code and both of the following conditions are met:

(a) The controlled substance is being provided to a patient who is enrolled in that hospice program, and

(b) The prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

(6) The physician is the medical director of, or attending physician at, an institutional facility, as that term is defined in rule 4729-17-01 of the Administrative Code, and both of the following conditions are met:

(a) The controlled substance is being provided to a person who has been admitted as an inpatient to or is a resident of an institutional facility, and

(b) The prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

(E) Nothing in this rule shall be construed to imply that one in-person physician examination demonstrates that a prescription has been issued for a legitimate medical purpose within the course of professional practice.

(F) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(2) "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or

(3) "A departure from or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

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- (G) For purposes of this rule, "informed consent" means a process of communication between a patient and physician discussing the risks and benefits of, and alternatives to, treatment through a remote evaluation that results in the patient's agreement or signed authorization to be treated through an evaluation conducted through appropriate technology when the physician is in a location remote from the patient.
- (H) This rule shall not apply to any prescribing situations specifically authorized by the Revised Code or Administrative Code.
- (I) For purposes of this rule, "patient" means a person for whom the physician provides healthcare services or the person's representative.

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4730-1-07

Miscellaneous provisions.

For purposes of Chapter 4730. of the Revised Code and Chapters 4730-1 and 4730-2 of the Administrative Code:

- (A) An adjudication hearing held pursuant to the provisions of Chapter 119. of the Revised Code shall be conducted in conformance with the provisions of Chapter 4731-13 of the Administrative Code.
- (B) The provisions of Chapters 4731-4, 4731-11, 4731-13, 4731-14, 4731-15, 4731-16, 4731-17, 4731-18, 4731-23, 4731-25, 4731-26, 4731-28, 4731-29, ~~and~~ 4731-35, and 4731-37 of the Administrative Code are applicable to the holder of a physician assistant license issued pursuant to section 4730.12 of the Revised Code, as though fully set forth in Chapter 4730-1 or 4730-2 of the Administrative Code.

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4730-2-07

Standards for prescribing.

- (A) A physician assistant who holds a prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician may prescribe a drug or therapeutic device provided the prescription is in accordance with all of the following:
 - (1) The extent and conditions of the physician-delegated prescriptive authority, granted by the supervising physician who is supervising the physician assistant in the exercise of the authority;
 - (2) The requirements of Chapter 4730. of the Revised Code;
 - (3) The requirements of Chapters 4730-1, 4730-2, 4730-4, 4731-11, **and** 4731-35, **and** 4731-37 of the Administrative Code; and
 - (4) The requirements of state and federal law pertaining to the prescription of drugs and therapeutic devices.
- (B) A physician assistant who holds a prescriber number who has been granted physician-delegated prescriptive authority by a supervising physician shall prescribe in a valid prescriber-patient relationship. This includes, but is not limited to:
 - (1) Obtaining a thorough history of the patient;
 - (2) Conducting a physical examination of the patient;
 - (3) Rendering or confirming a diagnosis;
 - (4) Prescribing medication, ruling out the existence of any recognized contraindications;
 - (5) Consulting with the supervising physician when necessary; and
 - (6) Properly documenting these steps in the patient's medical record.
- (C) The physician assistant's prescriptive authority shall not exceed the prescriptive authority of the supervising physician under whose supervision the prescription is being written, including but not limited to, any restrictions imposed on the physician's practice by action of the United States drug enforcement administration or the state medical board of Ohio.

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- (D) A physician assistant holding a prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician to prescribe controlled substances shall apply for and obtain the United States drug enforcement administration registration prior to prescribing any controlled substances.
- (E) A physician assistant holding prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician shall not prescribe any drug or device to perform or induce an abortion.
- (F) A physician assistant holding prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician shall include on each prescription the physician assistant's license number, and, where applicable, shall include the physician assistant's DEA number.

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4759-11-01

Miscellaneous provisions.

For purposes of Chapter 4759. of the Revised Code and rules promulgated thereunder:

- (A) An adjudication hearing held pursuant to the provisions of Chapter 119. of the Revised Code shall be conducted in conformance with the provisions of Chapter 4731-13 of the Administrative Code.
- (B) The provisions of Chapters 4731-4, 4731-8, 4731-13, 4731-15, 4731-16, 4731-26, and 4731-28, and 4731-37 of the Administrative Code are applicable to the holder of a license or limited permit issued pursuant to Chapter 4759. of the Revised Code, as though fully set forth in agency 4759 of the Administrative Code.

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4761-15-01

Miscellaneous provisions.

For purposes of Chapter 4761. of the Revised Code and rules promulgated thereunder:

- (A) An adjudication hearing held pursuant to the provisions of Chapter 119. of the Revised Code shall be conducted in conformance with the provisions of Chapter 4731-13 of the Administrative Code.
- (B) The provisions of Chapters 4731-4, 4731-8, 4731-13, 4731-15, 4731-16, 4731-17, 4731-26, ~~and~~ 4731-28, and 4731-37 of the Administrative Code are applicable to the holder of a license or limited permit issued pursuant to Chapter 4761. of the Revised Code, as though fully set forth in agency 4761 of the Administrative Code.

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4778-1-06

Miscellaneous provisions.

For purposes of Chapter 4778. of the Revised Code and rules promulgated thereunder, the provisions of Chapters 4731-13, 4731-16, 4731-26, and 4731-28, and 4731-37 of the Administrative Code are applicable to the holder of a license to practice as a genetic counselor issued under Chapter 4778. of the Revised Code, as though fully set forth in Chapter 4778-1 or Chapter 4778-2 of the Administrative Code.

AN ACT

To amend sections 3902.30, 4723.94, 4731.251, 4731.252, 4731.253, 4731.2910, 4731.30, 4732.33, and 5164.95; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 4731.253 (4731.254) and 4731.2910 (4743.09); and to enact new section 4731.253 and sections 3319.2212, 3701.1310, 3721.60, 4715.438, 4725.35, 4729.285, 4730.60, 4731.741, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4761.30, 4778.30, 4783.20, 5119.368, and 5164.291 of the Revised Code, and to amend Section 3 of S.B. 9 of the 130th General Assembly, as subsequently amended, to establish and modify requirements regarding the provision of telehealth services, to establish a provider credentialing program within the Medicaid program, to revise the law governing the State Medical Board's One-Bite Program, and to extend the suspension of certain programs and requirements under the state's insurance laws until January 1, 2026.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3902.30, 4723.94, 4731.251, 4731.252, 4731.253, 4731.2910, 4731.30, 4732.33, and 5164.95 be amended; sections 4731.253 (4731.254) and 4731.2910 (4743.09) be amended for the purpose of adopting new section numbers as indicated in parentheses; new section 4731.253 and sections 3319.2212, 3701.1310, 3721.60, 4715.438, 4725.35, 4729.285, 4730.60, 4731.741, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4761.30, 4778.30, 4783.20, 5119.368, and 5164.291 of the Revised Code be enacted to read as follows:

Sec. 3319.2212. A school psychologist licensed by the department of education under rules adopted in accordance with sections 3301.07 and 3319.22 of the Revised Code may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 3701.1310. During any declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, an individual with a developmental disability or any other permanent disability who is in need of surgery or any other health care procedure, any medical or other health care test, or any clinical care visit shall be given the opportunity to have at least one parent or legal guardian present if the presence of the individual's parent or legal guardian is necessary to alleviate any negative reaction that may be experienced by the individual who is the patient.

The director of health may take any action necessary to enforce this section.

Sec. 3721.60. (A) As used in this section, "long-term care facility" means all of the following:

(1) A home, as defined in section 3721.10 of the Revised Code;

(2) A residential facility licensed by the department of mental health and addiction services

under section 5119.34 of the Revised Code:

(3) A residential facility licensed by the department of developmental disabilities under section 5123.19 of the Revised Code;

(4) A facility operated by a hospice care program licensed by the department of health under Chapter 3712. of the Revised Code that is used exclusively for care of hospice patients or any other facility in which a hospice care program provides care for hospice patients.

(B) During any declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, each long-term care facility shall provide residents and their families with a video-conference visitation option if the governor, the director of health, other government official or entity, or the long-term care facility determines that allowing in-person visits at the facility would create a risk to the health of the residents.

Sec. 3902.30. (A) As used in this section:

(1) "Cost sharing" means the cost to a covered individual under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

(2) "Health benefit plan," "health care services," and "health plan issuer" have the same meanings as in section 3922.01 of the Revised Code.

(2)(3) "Health care professional" means any of the following:

(a) A physician licensed under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(b) A physician assistant licensed under Chapter 4731. of the Revised Code;

(c) An advanced practice registered nurse as defined in section 4723.01 of the Revised Code. has the same meaning as in section 4743.09 of the Revised Code.

(3)(4) "In-person health care services" means health care services delivered by a health care professional through the use of any communication method where the professional and patient are simultaneously present in the same geographic location.

(4) "Recipient" means a patient receiving health care services or a health care professional with whom the provider of health care services is consulting regarding the patient.

(5) "Telemedicine - Telehealth services" means a mode of providing health care services through synchronous or asynchronous information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where the recipient is located has the same meaning as in section 4743.09 of the Revised Code.

(B)(1) A health benefit plan shall provide coverage for telemedicine-telehealth services on the same basis and to the same extent that the plan provides coverage for the provision of in-person health care services.

(2) A health benefit plan shall not exclude coverage for a service solely because it is provided as a telemedicine-telehealth service.

(3) A health plan issuer shall reimburse a health care professional for a telehealth service that is covered under a patient's health benefit plan. Division (B)(3) of this section shall not be construed to require a specific reimbursement amount.

(C) A health benefit plan shall not impose any annual or lifetime benefit maximum in relation to telemedicine-telehealth services other than such a benefit maximum imposed on all benefits

offered under the plan.

~~(D) This (D)(1) A health benefit plan shall not impose a cost-sharing requirement for telehealth services that exceeds the cost-sharing requirement for comparable in-person health care services.~~

~~(2)(a) A health benefit plan shall not impose a cost-sharing requirement for a communication when all of the following apply:~~

~~(i) The communication was initiated by the health care professional.~~

~~(ii) The patient consented to receive a telehealth service from that provider on any prior occasion.~~

~~(iii) The communication is conducted for the purposes of preventive health care services only.~~

~~(b) If a communication described in division (D)(2)(a) of this section is coded based on time, then only the time the health care professional spends engaged in the communication is billable.~~

~~(E) This section shall not be construed as doing any of the following:~~

~~(1) Prohibiting a health benefit plan from assessing cost sharing requirements to a covered individual for telemedicine services, provided that such cost sharing requirements for telemedicine services are not greater than those for comparable in-person health care services;~~

~~(2) Requiring a health plan issuer to reimburse a health care professional for any costs or fees associated with the provision of telemedicine telehealth services that would be in addition to or greater than the standard reimbursement for comparable in-person health care services;~~

~~(3) (2) Requiring a health plan issuer to reimburse a telemedicine telehealth provider for telemedicine telehealth services at the same rate as in-person services.~~

~~(E) This section applies to all health benefit plans issued, offered, or renewed on or after January 1, 2021.~~

~~(3) Requiring a health plan issuer to provide coverage for asynchronous communication that differs from the coverage described in the applicable health benefit plan.~~

~~(F) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to carry out the requirements of this section. Any such rules adopted by the superintendent are not subject to the requirements of division (F) of section 121.95 of the Revised Code.~~

Sec. 4715.438. Nothing in H.B. 122 of the 134th general assembly shall be interpreted as altering any law related to the practice of dentistry or rule adopted by the state dental board that is in effect on the effective date of this section.

Sec. 4723.94. (A) As used in this section:

~~(1) "Facility fee" means any fee charged or billed for telemedicine services provided in a facility that is intended to compensate the facility for its operational expenses and is separate and distinct from a professional fee.~~

~~(2) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.~~

~~(3) "Telemedicine services" has the same meaning as in section 3902.30 of the Revised Code.~~

~~(B) An advanced practice registered nurse providing telemedicine may provide telehealth services shall not charge a facility fee, an origination fee, or any fee associated with the cost of the equipment used to provide telemedicine services to a health plan issuer covering telemedicine services under in accordance with section 3902.30 4743.09 of the Revised Code.~~

Sec. 4725.35. An optometrist who holds a therapeutic pharmaceutical agents certificate issued under this chapter may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4729.285. A pharmacist may provide telehealth services in accordance with section 4743.09 of the Revised Code, except that in the case of dispensing a dangerous drug, a pharmacist shall not use telehealth mechanisms or other virtual means to perform any of the actions involved in dispensing the dangerous drug unless the action is authorized by the state board of pharmacy through rules it adopts under this chapter or section 4743.09 of the Revised Code.

Sec. 4730.60. A physician assistant may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4731.251. (A) As used in this section and in sections 4731.252 and 4731.253 to 4731.254 of the Revised Code:

(1) "Applicant" means an individual who has applied under Chapter 4730., 4731., 4759., 4760., 4761., 4762., 4774., or 4778. of the Revised Code for a license, training or other certificate, limited permit, or other authority to practice as any one of the following practitioners: a physician assistant, physician, podiatrist, limited branch of medicine practitioner, dietitian, anesthesiologist assistant, respiratory care professional, acupuncturist, radiologist assistant, or genetic counselor. "Applicant" may include an individual who has been granted authority by the state medical board to practice as one type of practitioner, but has applied for authority to practice as another type of practitioner.

(2) "Impaired" or "impairment" has the same meaning as in division (B)(5) of section 4730.25, division (B)(26) of section 4731.22, division (A)(18) of section 4759.07, division (B)(6) of section 4760.13, division (A)(18) of section 4761.09, division (B)(6) of section 4762.13, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code.

(2)-(3) "Practitioner" means any of the following:

(a) An individual authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine;

(b) An individual licensed under Chapter 4730. of the Revised Code to practice as a physician assistant;

(c) An individual authorized under Chapter 4759. of the Revised Code to practice as a dietitian;

(d) An individual authorized under Chapter 4760. of the Revised Code to practice as an anesthesiologist assistant;

(e) An individual authorized under Chapter 4761. of the Revised Code to practice respiratory care;

(f) An individual authorized under Chapter 4762. of the Revised Code to practice as an acupuncturist or oriental medicine practitioner;

(g) An individual authorized under Chapter 4774. of the Revised Code to practice as a radiologist assistant;

(h) An individual licensed under Chapter 4778. of the Revised Code to practice as a genetic counselor.

(B) The state medical board shall establish a confidential program for the treatment of

impaired practitioners and applicants, which shall be known as the one-bite program. The board shall contract with one organization to conduct the program and perform monitoring services.

To be qualified to contract with the board under this section, an organization must meet all of the following requirements:

- (1) Be sponsored by one or more professional associations or societies of practitioners;
- (2) Be organized as a not-for-profit entity and exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;
- (3) Contract with or employ to serve as the organization's medical director an individual who is authorized under this chapter to practice medicine and surgery or osteopathic medicine and surgery and specializes or has training and expertise in addiction medicine;
- (4) Contract with or employ one or more of the following as necessary for the organization's operation:
 - (a) An individual licensed under Chapter 4758. of the Revised Code as an independent chemical dependency counselor-clinical supervisor, independent chemical dependency counselor, chemical dependency counselor III, or chemical dependency counselor II;
 - (b) An individual licensed under Chapter 4757. of the Revised Code as an independent social worker, social worker, licensed professional clinical counselor, or licensed professional counselor;
 - (c) An individual licensed under Chapter 4732. of the Revised Code as a psychologist.
- (C) The monitoring organization shall do all of the following pursuant to the contract:
 - (1) Receive any report of suspected practitioner impairment, including a report made under division (B)(2) of section 4730.32, division (B)(2) of section 4731.224, section 4759.13, division (B)(2) of section 4760.16, section 4761.19, division (B)(2) of section 4762.16, division (B)(2) of section 4774.16, or section 4778.17 of the Revised Code;
 - (2) Notify a practitioner who is the subject of a report received under division (C)(1) of this section that the report has been made and that the practitioner may be eligible to participate in the program conducted under this section;
 - (3) Receive from the board a referral regarding an applicant, as described in section 4731.253 of the Revised Code;
 - (4) Evaluate the records of an applicant who is the subject of a referral received under division (C)(3) of this section, in particular records from another jurisdiction regarding the applicant's prior treatment for impairment or current monitoring;
 - (5) Determine whether a practitioner reported or applicant referred to the monitoring organization is eligible to participate in the program and notify the practitioner or applicant of the determination;
 - (4)-(6) In the case of a practitioner reported by a treatment provider, notify the treatment provider of the eligibility determination;
 - (5)-(7) Report to the board any practitioner or applicant who is determined -ineligible to participate in the program;
 - (6)-(8) Refer an eligible practitioner who chooses to participate in the program for evaluation by a treatment provider approved by the board under section 4731.25 of the Revised Code, unless the report received by the monitoring organization was made by an approved treatment provider and the practitioner has already been evaluated by the treatment provider;

(7)-(9) Monitor the evaluation of an eligible practitioner;

(8)-(10) Refer an eligible practitioner who chooses to participate in the program to a treatment provider approved by the board under section 4731.25 of the Revised Code;

(9)-(11) Establish, in consultation with the treatment provider to which a practitioner is referred, the terms and conditions with which the practitioner must comply for continued participation in and successful completion of the program;

(10)-(12) Report to the board any practitioner who does not complete evaluation or treatment or does not comply with any of the terms and conditions established by the monitoring organization and the treatment provider;

(11)-(13) Perform any other activities specified in the contract with the board or that the monitoring organization considers necessary to comply with this section and sections 4731.252 and 4731.253 to 4731.254 of the Revised Code.

(D) The monitoring organization shall not disclose to the board the name of a practitioner or applicant or any records relating to a practitioner or applicant, unless any of the following occurs:

(1) The practitioner or applicant is determined to be ineligible to participate in the program.

(2) The practitioner or applicant requests the disclosure.

(3) The practitioner or applicant is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, or monitoring.

(4) The practitioner or applicant presents an imminent danger to the public or to the practitioner, as a result of the practitioner's or applicant's impairment.

(5) The practitioner has relapsed or the practitioner's impairment has not been substantially alleviated by participation in the program.

(E)(1) The monitoring organization shall develop procedures governing each of the following:

(a) Receiving reports of practitioner impairment;

(b) Notifying practitioners of reports and eligibility determinations;

(c) Receiving applicant referrals as described in section 4731.253 of the Revised Code;

(d) Evaluating records of referred applicants, in particular records from other jurisdictions regarding prior treatment for impairment or continued monitoring;

(e) Notifying applicants of eligibility determinations;

(f) Referring eligible practitioners for evaluation or treatment;

(g) Establishing individualized treatment plans for eligible practitioners, as recommended by treatment providers;

(h) Establishing individualized terms and conditions with which eligible practitioners or applicants must comply for continued participation in and successful completion of the program.

(2) The monitoring organization, in consultation with the board, shall develop procedures governing each of the following:

(a) Providing reports to the board on a periodic basis on the total number of practitioners or applicants participating in the program, without disclosing the names or records of any program participants other than those about whom reports are required by this section;

(b) Reporting to the board any practitioner or applicant who due to impairment presents an imminent danger to the public or to the practitioner or applicant;

(c) Reporting to the board any practitioner or applicant who is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, or monitoring;

(d) Reporting to the board any practitioner or applicant whose impairment was not substantially alleviated by participation in the program or who has relapsed.

(F) The board may adopt any rules it considers necessary to implement this section and sections ~~4731.252 and 4731.253 to 4731.254~~ of the Revised Code, including rules regarding the monitoring organization and treatment providers that provide treatment to practitioners referred by the monitoring organization. Any such rules shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 4731.252. (A) A practitioner is eligible to participate in the program established under section 4731.251 of the Revised Code if all of the following are the case:

(1) The practitioner is impaired.

(2) The practitioner has not participated previously in the program.

(3) Unless the state medical board has referred the practitioner to the program, the practitioner has not been sanctioned previously by the board ~~under division (B)(5) of section 4730.25, division (B)(26) of section 4731.22, division (A)(18) of section 4759.07, division (B)(6) of section 4760.13, division (A)(18) of section 4761.09, division (B)(6) of section 4762.13, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code for impairment.~~

(B) All of the following apply to a practitioner who participates in the program:

(1) The practitioner must comply with all terms and conditions for continued participation in and successful completion of the program.

(2) On acceptance into the program, the practitioner must suspend practice until after the later of the following:

(a) The date the treatment provider determines that the practitioner is no longer impaired and is able to practice according to acceptable and prevailing standards of care;

(b) The end of a period specified by the treatment provider, which shall be not less than thirty days.

(3) The practitioner is responsible for all costs associated with participation.

(4) The practitioner is deemed to have waived any right to confidentiality that would prevent the monitoring organization conducting the program or a treatment provider from making reports required by section 4731.251 of the Revised Code.

Sec. 4731.253. (A) Subject to division (B) of this section, the state medical board shall not limit or suspend a license, certificate, or limited permit, refuse to issue a license, certificate, or limited permit, or reprimand or place on probation an applicant solely on the grounds of impairment occurring prior to the applicant seeking authority to practice in this state.

(B)(1) An applicant who was authorized to practice in another jurisdiction before seeking authority to practice in this state is not subject to disciplinary action, as provided by division (A) of this section, and is eligible to participate in the program established under section 4731.251 of the Revised Code, only if all of the following are the case:

(a) As part of the process of applying for authority to practice in this state, the applicant disclosed to the board impairment that occurred while practicing in the other jurisdiction.

(b) The applicant does all of the following:

(i) Participates currently in a confidential treatment and monitoring program for impairment in the other jurisdiction;

(ii) Agrees to provide to the board or monitoring organization documentation of the applicant's current participation;

(iii) Waives any right to confidentiality that would prevent the board or monitoring organization from sharing that documentation with each other.

(c) The applicant remains in good standing with the other jurisdiction's licensing authority and confidential treatment and monitoring program.

(d) The applicant has not participated previously in the program established under section 4731.251 of the Revised Code and certifies a willingness to participate in this program.

(e) The applicant has not been sanctioned previously by the board for impairment.

(2) An applicant who was not authorized to practice in any jurisdiction before seeking authority to practice in this state is not subject to disciplinary action, as provided by division (A) of this section, and is eligible to participate in the program established under section 4731.251 of the Revised Code, only if all of the following are the case:

(a) As part of the process of applying for authority to practice in this state, the applicant disclosed to the board impairment that occurred before applying for authority to practice.

(b) For the impairment disclosed to the board, the applicant meets all of the following:

(i) Participated in and successfully completed a treatment program and any terms of aftercare;

(ii) Agrees to provide to the board or monitoring organization documentation of the applicant's participation and successful completion;

(iii) Waives any right to confidentiality that would prevent the board or monitoring organization from sharing that documentation with each other.

(c) The applicant has not participated previously in the program established under section 4731.251 of the Revised Code and certifies a willingness to participate in this program.

(d) The applicant has not been sanctioned previously by the board for impairment.

(C) The monitoring organization shall evaluate the applicant's treatment and monitoring records and promptly notify the board if the records do not meet the monitoring organization's eligibility standards for the program established under section 4731.251 of the Revised Code.

(D) If the board grants an applicant described in this section a license, certificate, or limited permit to practice in this state, the board shall refer the practitioner to the monitoring organization conducting the program established under section 4731.251 of the Revised Code.

(E) Upon the board's referral to the monitoring organization, all of the following apply:

(1) The practitioner shall enter into a monitoring agreement with the monitoring organization conducting the program established under section 4731.251 of the Revised Code.

(2) Based on an evaluation of the practitioner's prior treatment or monitoring, the monitoring organization shall determine the length and terms of the practitioner's monitoring agreement.

(3) The practitioner shall comply with all terms and conditions for continued participation in and successful completion of the program.

(4) The practitioner shall be responsible for all costs associated with participation in the program.

(5) The practitioner shall be deemed to have waived any right to confidentiality that would

prevent the monitoring organization conducting the program from making reports required by section 4731.251 of the Revised Code.

Sec. 4731.253 4731.254. In the absence of fraud or bad faith, no monitoring organization that conducts a program established under section 4731.251 of the Revised Code and no agent, employee, member, or representative of such organization shall be liable in damages in a civil action or subject to criminal prosecution for performing any of the duties required by that section, the contract with the state medical board, or section 4731.252 or 4731.253 of the Revised Code.

Sec. 4731.30. (A) As used in this section and sections 4731.301 and 4731.302 of the Revised Code, "medical marijuana," "drug database," "physician," and "qualifying medical condition" have the same meanings as in section 3796.01 of the Revised Code.

(B)(1) Except as provided in division (B)(4) of this section, a physician seeking to recommend treatment with medical marijuana shall apply to the state medical board for a certificate to recommend. An application shall be submitted in the manner established in rules adopted under section 4731.301 of the Revised Code.

(2) The board shall grant a certificate to recommend if both of the following conditions are met:

(a) The application is complete and meets the requirements established in rules.

(b) The applicant demonstrates that the applicant does not have an ownership or investment interest in or compensation arrangement with an entity licensed under Chapter 3796. of the Revised Code or an applicant for licensure.

(3) A certificate to recommend expires according to the renewal schedule established in rules adopted under section 4731.301 of the Revised Code and may be renewed in accordance with the procedures established in those rules.

(4) This section does not apply to a physician who recommends treatment with marijuana or a drug derived from marijuana under any of the following that is approved by an investigational review board or equivalent entity, the United States food and drug administration, or the national institutes of health or one of its cooperative groups or centers under the United States department of health and human services:

(a) A research protocol;

(b) A clinical trial;

(c) An investigational new drug application;

(d) An expanded access submission.

(C)(1) A physician who holds a certificate to recommend may recommend that a patient be treated with medical marijuana if all of the following conditions are met:

(a) The patient has been diagnosed with a qualifying medical condition;

(b) A bona fide physician-patient relationship has been established through all of the following:

(i) An in person physical examination of the patient by the physician either in person or through the use of telehealth services in accordance with section 4743.09 of the Revised Code;

(ii) A review of the patient's medical history by the physician;

(iii) An expectation of providing care and receiving care on an ongoing basis.

(c) The physician has requested, or a physician delegate approved by the state board of

pharmacy has requested, from the drug database a report of information related to the patient that covers at least the twelve months immediately preceding the date of the report, and the physician has reviewed the report.

(2) In the case of a patient who is a minor, the physician may recommend treatment with medical marijuana only after obtaining the consent of the patient's parent or other person responsible for providing consent to treatment.

(D)(1) When issuing a written recommendation to a patient, the physician shall specify any information required in rules adopted by the board under section 4731.301 of the Revised Code.

(2) A written recommendation issued to a patient under this section is valid for a period of not more than ninety days. The physician may renew the recommendation for not more than three additional periods of not more than ninety days each. Thereafter, the physician may issue another recommendation to the patient only upon ~~a physical an~~ examination of the patient ~~as described in~~ division (C)(1)(b)(i) of this section.

(E) Annually, the physician shall submit to the state medical board a report that describes the physician's observations regarding the effectiveness of medical marijuana in treating the physician's patients during the year covered by the report. When submitting reports, a physician shall not include any information that identifies or would tend to identify any specific patient.

(F) Each physician who holds a certificate to recommend shall complete annually at least two hours of continuing medical education in medical marijuana approved by the state medical board.

(G) A physician shall not do any of the following:

- (1) Personally furnish or otherwise dispense medical marijuana;
- (2) Issue a recommendation for a family member or the physician's self.

(H) A physician is immune from civil liability, is not subject to professional disciplinary action by the state medical board or state board of pharmacy, and is not subject to criminal prosecution for any of the following actions:

- (1) Advising a patient, patient representative, or caregiver about the benefits and risks of medical marijuana to treat a qualifying medical condition;
- (2) Recommending that a patient use medical marijuana to treat or alleviate the condition;
- (3) Monitoring a patient's treatment with medical marijuana.

Sec. 4731.741. A physician may provide telehealth services in accordance with sections 4743.09 of the Revised Code.

Sec. 4732.33. (A) The state board of psychology shall adopt rules governing the use of telepsychology for the purpose of protecting the welfare of recipients of telepsychology services and establishing requirements for the responsible use of telepsychology in the practice of psychology and school psychology, including supervision of persons registered with the state board of psychology as described in division (B) of section 4732.22 of the Revised Code. The rules adopted by the board shall be consistent with section 4743.09 of the Revised Code. The rules are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

(B) A psychologist or school psychologist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4734.60. A chiropractor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4731.2910-4743.09. (A) As used in this section:

(1) "Durable medical equipment" means a type of equipment, such as a remote monitoring device utilized by a physician, physician assistant, or advanced practice registered nurse in accordance with this section, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, and generally is not useful to a person in the absence of illness or injury and, in addition, includes repair and replacement parts for the equipment.

(2) "Facility fee" has the same meaning as in section 4723.94 of the Revised Code means any fee charged or billed for telehealth services provided in a facility that is intended to compensate the facility for its operational expenses and is separate and distinct from a professional fee.

(2)(3) "Health care professional" means:

(a) An advanced practice registered nurse, as defined in section 4723.01 of the Revised Code;

(b) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

(c) A pharmacist licensed under Chapter 4729. of the Revised Code;

(d) A physician assistant licensed under Chapter 4730. of the Revised Code;

(e) A physician licensed under this chapter Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(b) A physician assistant licensed under Chapter 4730.

(f) A psychologist or school psychologist licensed under Chapter 4732. of the Revised Code or under rules adopted in accordance with sections 3301.07 and 3319.22 of the Revised Code;

(g) A chiropractor licensed under Chapter 4734. of the Revised Code;

(h) An audiologist or speech-language pathologist licensed under Chapter 4753. of the Revised Code;

(i) An occupational therapist or physical therapist licensed under Chapter 4755. of the Revised Code;

(j) An occupational therapy assistant or physical therapist assistant licensed under Chapter 4755. of the Revised Code;

(k) A professional clinical counselor, independent social worker, or independent marriage and family therapist licensed under Chapter 4757. of the Revised Code;

(l) An independent chemical dependency counselor licensed under Chapter 4758. of the Revised Code;

(m) A dietitian licensed under Chapter 4759. of the Revised Code;

(n) A respiratory care professional licensed under Chapter 4761. of the Revised Code;

(o) A genetic counselor licensed under Chapter 4778. of the Revised Code;

(p) A certified Ohio behavior analyst certified under Chapter 4783. of the Revised Code.

(3)(4) "Health care professional licensing board" means any of the following:

(a) The board of nursing;

(b) The state vision professionals board;

(c) The state board of pharmacy;

(d) The state medical board;

(e) The state board of psychology;

(f) The state board of education with respect to the licensure of school psychologists;

(g) The state chiropractic board;

(h) The state speech and hearing professionals board;

(i) The Ohio occupational therapy, physical therapy, and athletic trainers board;

(j) The counselor, social worker, and marriage and family therapist board;

(k) The chemical dependency professionals board.

(5) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.

(4)(6) "Telemedicine Telehealth services" has the same meaning as in section 3902.30 of the Revised Code means health care services provided through the use of information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where either of the following is located:

(a) The patient receiving the services;

(b) Another health care professional with whom the provider of the services is consulting regarding the patient.

(B)(1) Each health care professional licensing board shall permit a health care professional under its jurisdiction to provide the professional's services as telehealth services in accordance with this section. Subject to division (B)(2) of this section, a board may adopt any rules it considers necessary to implement this section. All rules adopted under this section shall be adopted in accordance with Chapter 119. of the Revised Code. Any such rules adopted by a board are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

(2)(a) Except as provided in division (B)(2)(b) of this section, the rules adopted by a health care professional licensing board under this section shall establish a standard of care for telehealth services that is equal to the standard of care for in-person services.

(b) Subject to division (B)(2)(c) of this section, a board may require an initial in-person visit prior to prescribing a schedule II controlled substance to a new patient, equivalent to applicable state and federal requirements.

(c)(i) A board shall not require an initial in-person visit for a new patient whose medical record indicates that the patient is receiving hospice or palliative care, who is receiving medication-assisted treatment or any other medication for opioid-use disorder, who is a patient with a mental health condition, or who, as determined by the clinical judgment of a health care professional, is in an emergency situation.

(ii) Notwithstanding division (B) of section 3796.01 of the Revised Code, medical marijuana shall not be considered a schedule II controlled substance.

(C) With respect to the provision of telehealth services, all of the following apply:

(1) A health care professional may use synchronous or asynchronous technology to provide telehealth services to a patient during an initial visit if the appropriate standard of care for an initial visit is satisfied.

(2) A health care professional may deny a patient telehealth services and, instead, require the patient to undergo an in-person visit.

(3) When providing telehealth services in accordance with this section, a health care professional shall comply with all requirements under state and federal law regarding the protection of patient information. A health care professional shall ensure that any username or password information and any electronic communications between the professional and a patient are securely

transmitted and stored.

(4) A health care professional may use synchronous or asynchronous technology to provide telehealth services to a patient during an annual visit if the appropriate standard of care for an annual visit is satisfied.

(5) In the case of a health care professional who is a physician, physician assistant, or advanced practice registered nurse, both of the following apply:

(a) The professional may provide telehealth services to a patient located outside of this state if permitted by the laws of the state in which the patient is located.

(b) The professional may provide telehealth services through the use of medical devices that enable remote monitoring, including such activities as monitoring a patient's blood pressure, heart rate, or glucose level.

(D) When a patient has consented to receiving telehealth services, the health care professional who provides those services is not liable in damages under any claim made on the basis that the services do not meet the same standard of care that would apply if the services were provided in-person.

(E)(1) A health care professional providing telemedicine telehealth services shall not charge a patient or a health plan issuer covering telehealth services under section 3902.30 of the Revised Code any of the following: a facility fee, an origination fee, or any fee associated with the cost of the equipment used at the provider site to provide telemedicine telehealth services to a health plan issuer covering telemedicine services under section 3902.30 of the Revised Code.

A health care professional providing telehealth services may charge a health plan issuer for durable medical equipment used at a patient or client site.

(2) A health care professional may negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative costs incurred in providing telehealth services as long as a patient is not responsible for any portion of the fee.

(3) A health care professional providing telehealth services shall obtain a patient's consent before billing for the cost of providing the services, but the requirement to do so applies only once.

(F) Nothing in this section limits or otherwise affects any other provision of the Revised Code that requires a health care professional who is not a physician to practice under the supervision of, in collaboration with, in consultation with, or pursuant to the referral of another health care professional.

(G) It is the intent of the general assembly, through the amendments to this section, to expand access to and investment in telehealth services in this state in congruence with the expansion and investment in telehealth services made during the COVID-19 pandemic.

Sec. 4753.20. An audiologist or speech-language pathologist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4755.90. An occupational therapist or physical therapist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

An occupational therapy assistant or physical therapist assistant may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4757.50. A professional clinical counselor, independent social worker, or independent marriage and family therapist may provide telehealth services in accordance with section 4743.09 of

the Revised Code.

Sec. 4758.80. An independent chemical dependency counselor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4759.20. A dietitian may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4761.30. A respiratory care professional may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4778.30. A genetic counselor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4783.20. A certified Ohio behavior analyst may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 5119.368. (A) As used in this section, "telehealth services" has the same meaning as in section 4743.09 of the Revised Code.

(B) Each community mental health services provider and community addiction services provider shall establish written policies and procedures describing how the provider will ensure that staff persons assisting clients with receiving telehealth services or providing telehealth services are fully trained in using equipment necessary for providing the services.

(C) Prior to providing telehealth services to a client, a provider shall describe to the client the potential risks associated with receiving treatment through telehealth services and shall document that the client was provided with the risks and agreed to assume those risks. The risks communicated to a client shall address the following:

- (1) Clinical aspects of receiving treatment through telehealth services;
- (2) Security considerations when receiving treatment through telehealth services;
- (3) Confidentiality for individual and group counseling.

(D) It is the responsibility of the provider, to the extent possible, to ensure contractually that any entity or individuals involved in the transmission of information through telehealth mechanisms guarantee that the confidentiality of the information is protected.

(E) Every provider shall have a contingency plan for providing telehealth services to clients in the event that technical problems occur during the provision of those services.

(F) Providers shall maintain, at a minimum, the following information pertaining to local resources:

(1) The local suicide prevention telephone hotline, if available, or the national suicide prevention telephone hotline.

- (2) Contact information for the local police and fire departments.

The provider shall provide the client written information on how to access assistance in a crisis, including one caused by equipment malfunction or failure.

(G) It is the responsibility of the provider to ensure that equipment meets standards sufficient to do the following:

- (1) To the extent possible, ensure confidentiality of communication;
- (2) Provide for interactive communication between the provider and the client;
- (3) When providing telehealth services using synchronous technology, ensure that video or audio are sufficient to enable real-time interaction between the client and the provider and to ensure

the quality of the service provided.

(H) A mental health facility or unit that is serving as a client site shall be maintained in such a manner that appropriate staff persons are on hand at the facility or unit in the event of a malfunction with the equipment used to provide telehealth services.

(I)(1) All telehealth services provided by interactive videoconferencing shall meet both of the following conditions:

(a) Begin with the verification of the client through a name and password or personal identification number when treatment services are being provided;

(b) Be provided in accordance with state and federal law.

(2) When providing telehealth services in accordance with this section, a provider shall comply with all requirements under state and federal law regarding the protection of patient information. Each provider shall ensure that any username or password information and any electronic communications between the provider and a client are securely transmitted and stored.

(J) The department of mental health and addiction services may adopt rules as it considers necessary to implement this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code. Any such rules adopted by the department are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

Sec. 5164.291. The department of medicaid shall establish a credentialing program that includes a credentialing committee to review the competence, professional conduct, and quality of care provided by medicaid providers.

Any activities performed by the credentialing committee shall be considered activities of a peer review committee of a health care entity and shall be subject to sections 2305.25 to 2305.253 of the Revised Code.

The medicaid director may adopt rules under section 5164.02 of the Revised Code as necessary to implement this section. Any rules adopted shall be consistent with the requirements that apply to medicare advantage organizations under 42 C.F.R. 422.204.

Sec. 5164.95. (A) As used in this section, "telehealth service" means a health care service delivered to a patient through the use of interactive audio, video, or other telecommunications or electronic technology from a site other than the site where the patient is located.

(B) The department of medicaid shall establish standards for medicaid payments for health care services the department determines are appropriate to be covered by the medicaid program when provided as telehealth services. The standards shall be established in rules adopted under section 5164.02 of the Revised Code.

In accordance with section 5162.021 of the Revised Code, the medicaid director shall adopt rules authorizing the directors of other state agencies to adopt rules regarding the medicaid coverage of telehealth services under programs administered by the other state agencies. Any such rules adopted by the medicaid director or the directors of other state agencies are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

(C)(1) To the extent permitted under rules adopted under section 5164.02 of the Revised Code and applicable federal law, the following practitioners are eligible to provide telehealth services covered pursuant to this section:

(a) A physician licensed under Chapter 4731. of the Revised Code to practice medicine and

surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(b) A psychologist or school psychologist licensed under Chapter 4732. of the Revised Code or under rules adopted in accordance with sections 3301.07 and 3319.22 of the Revised Code;

(c) A physician assistant licensed under Chapter 4730. of the Revised Code;

(d) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner licensed under Chapter 4723. of the Revised Code;

(e) An independent social worker, independent marriage and family therapist, or professional clinical counselor licensed under Chapter 4757. of the Revised Code;

(f) An independent chemical dependency counselor licensed under Chapter 4758. of the Revised Code;

(g) A supervised practitioner or supervised trainee;

(h) An audiologist or speech-language pathologist licensed under Chapter 4753. of the Revised Code;

(i) An audiology aide or speech-language pathology aide, as defined in section 4753.072 of the Revised Code, or an individual holding a conditional license under section 4753.071 of the Revised Code;

(j) An occupational therapist or physical therapist licensed under Chapter 4755. of the Revised Code;

(k) An occupational therapy assistant or physical therapist assistant licensed under Chapter 4755. of the Revised Code.

(l) A dietitian licensed under Chapter 4759. of the Revised Code;

(m) A chiropractor licensed under Chapter 4734. of the Revised Code;

(n) A pharmacist licensed under Chapter 4729. of the Revised Code;

(o) A genetic counselor licensed under Chapter 4778. of the Revised Code;

(p) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

(q) A respiratory care professional licensed under Chapter 4761. of the Revised Code;

(r) A certified Ohio behavior analyst certified under Chapter 4783. of the Revised Code;

(s) A practitioner who provides services through a medicaid school program;

(t) Subject to section 5119.368 of the Revised Code, a practitioner authorized to provide services and supports certified under section 5119.36 of the Revised Code through a community mental health services provider or community addiction services provider;

(u) Any other practitioner the medicaid director considers eligible to provide telehealth services.

(2) In accordance with division (B) of this section and to the extent permitted under rules adopted under section 5164.02 of the Revised Code and applicable federal law, the following provider types are eligible to submit claims for medicaid payments for providing telehealth services:

(a) Any practitioner described in division (C)(1) of this section, except for those described in divisions (C)(1)(g), (i), and (k) of this section;

(b) A professional medical group;

(c) A federally qualified health center or federally qualified health center look-alike, as defined in section 3701.047 of the Revised Code;

(d) A rural health clinic;

(e) An ambulatory health care clinic;

(f) An outpatient hospital;

(g) A medicaid school program;

(h) Subject to section 5119.368 of the Revised Code, a community mental health services provider or community addiction services provider that offers services and supports certified under section 5119.36 of the Revised Code;

(i) Any other provider type the medicaid director considers eligible to submit the claims for payment.

(D)(1) When providing telehealth services under this section, a practitioner shall comply with all requirements under state and federal law regarding the protection of patient information. A practitioner shall ensure that any username or password information and any electronic communications between the practitioner and a patient are securely transmitted and stored.

(2) When providing telehealth services under this section, every practitioner site shall have access to the medical records of the patient at the time telehealth services are provided.

SECTION 2. That existing sections 3902.30, 4723.94, 4731.251, 4731.252, 4731.253, 4731.2910, 4731.30, 4732.33, and 5164.95 of the Revised Code are hereby repealed.

SECTION 3. That Section 3 of S.B. 9 of the 130th General Assembly (as amended by H.B. 49 of the 132nd General Assembly) be amended to read as follows:

Sec. 3. (A) During the period beginning on January 1, 2014, and expiring January 1, ~~2022~~²⁰²⁶, the operation of sections 1751.15, 1751.16, 1751.17, 3923.122, 3923.58, 3923.581, 3923.582, 3923.59, 3924.07, 3924.08, 3924.09, 3924.10, 3924.11, 3924.111, 3924.12, 3924.13, and 3924.14 of the Revised Code are suspended. The suspension shall take effect in accordance with the following:

(1) Carriers shall not be required to offer open enrollment coverage under the Ohio Open Enrollment Program on or after January 1, 2014. In addition, carriers shall not reinsure any insurance policies with the Ohio Health Reinsurance Program during the suspension of the Program on or after January 1, 2014.

(2) Notwithstanding this section, the Board of Directors of the Ohio Health Reinsurance Program shall continue to have all of the authority and protection provided by sections 3924.07 to 3924.14 of the Revised Code during the period beginning January 1, 2014, and ending December 31, 2014, in order to wind up the affairs of the Ohio Health Reinsurance Program. This shall include, but is not limited to, the receipt, processing, and payment of all claims incurred on or before January 1, 2014, assessments needed to fund the wind up of the Program, the refund of any excess assessments, and the preparation of final audited financial statements and tax returns.

(3) With respect to an open enrollment or conversion policy or contract issued prior to January 1, 2014, a carrier may terminate such policy or contract on or after January 1, 2014, if the carrier does both of the following:

(a) Provides notice of termination to the policy or contract holder at the time the policy is

issued or at least ninety days prior to the termination;

(b) Offers the policy or contract holder the option to purchase other coverage offered by the insurer to be effective at the time of the termination.

(4) Carriers shall not be required to include any option to convert coverage as required by sections 1751.16, 1751.17, and 3923.122 of the Revised Code in any policy or contract issued on or after January 1, 2014.

(B) If the amendments made by 42 U.S.C. 300gg-1 and 300gg-6, regarding the requirements related to health insurance coverage become ineffective prior to the expiration of the suspension on January 1, ~~2022~~²⁰²⁶, then sections 1751.15, 1751.16, 1751.17, 3923.122, 3923.58, 3923.581, 3923.582, 3923.59, 3924.07, 3924.08, 3924.09, 3924.10, 3924.11, 3924.111, 3924.12, 3924.13, and 3924.14 of the Revised Code, in either their present form or as they are later amended, again become operational.

SECTION 4. That existing Section 3 of S.B. 9 of the 130th General Assembly (as amended by H.B. 49 of the 132nd General Assembly) is hereby repealed.

SECTION 5. Section 3902.30 of the Revised Code, as amended by this act, applies to health benefit plans, as defined in section 3922.01 of the Revised Code, that are in effect on the effective date of the amendment to that section and to plans that are issued, renewed, modified, or amended on or after the effective date of that amendment.

SECTION 6. Beginning on the effective date of this section, a health care professional licensing board, as defined in section 4743.09 of the Revised Code, may suspend the enforcement of any rules that the board has in effect on the effective date of this section regarding the provision of telehealth and in-person services by a health care professional under the board's jurisdiction, and requirements for the prescribing of controlled substances, while the board amends or adopts new rules that are consistent with the provisions of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____
day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____



MEMORANDUM

TO: Ms. Betty Montgomery, President, State Medical Board of Ohio
State Medical Board of Ohio Members

FROM: Stephanie Loucka, Executive Director

DATE: January 12, 2022

RE: Feedback requested for Draft FSMB Telemedicine Technologies Policy

The Federation of State Medical Boards has issued a call for comments on a recently drafted policy.

During the FSMB's 2021 Annual Business Meeting, the House of Delegates adopted a recommendation that called for the FSMB to establish a workgroup to update the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine* (HoD 2014), taking into account the lessons learned during the COVID-19 pandemic.

Accordingly, the Workgroup on Telemedicine was established by Kenneth B. Simons, MD, Chair of the FSMB, in May 2021 and was charged with a) evaluating the impact of license waivers and modifications on the practice of telemedicine across state lines; b) evaluating the easing of geographic, site specific and modality restrictions on the practice of telemedicine and the impact on patient access and care; c) reviewing current state and federal legislative, policy and regulatory trends, including, but not limited to, definitions, modalities, continuity of care, and consultations; d) evaluating the appropriate use of telemedicine during a public health emergency vs. nonemergent/nonurgent times; and e) developing a report and recommendations revising and expanding the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, based upon recent experiences, utilization, and outcomes related to intra- and interstate telemedicine practice.

The Workgroup has authored a draft report, *Report on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, for which they are seeking comment and feedback. (Attached)

Comments are due to FSMB by **Wednesday, February 16, 2022**. Once the comment period is closed, the Workgroup on Telemedicine will consider feedback received. The final policy document will then be presented to the FSMB Board of Directors and thereafter to the House of Delegates Annual Business Meeting for consideration in April 2022.



REPORT ON THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF MEDICINE

FSMB Workgroup on Telemedicine
DRAFT REPORT – JANUARY 2022

INTRODUCTION

In April 2014, the Federation of State Medical Boards (FSMB) adopted the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practices of Medicine*, superseding the *Model Guidelines for the Appropriate Use of the Internet in Medical Practice* (2002). At the time of its adoption, the *Model Policy (2014)* addressed current regulatory challenges associated with the provisions of telemedicine. Since then, the utilization of telemedicine has dramatically increased, resulting in not only advancements in telemedicine technologies, but also identification of newer or more pressing challenges to effective telemedicine utilization.

There are numerous factors contributing to the continual increase of telemedicine being used as a component of the practice of medicine. The greatest of these catalysts by far has been the global COVID-19 pandemic and resulting national public health emergency (PHE). Prior to the declaration of a PHE by the United States, telemedicine visits accounted for a small percentage of total care visits, but within the first six months of the PHE, total telemedicine visits increased by more than 2,000 percent. Certain specialties, such as psychiatry, endocrinology and neurology, saw greater increases in telemedicine utilization than others. Although the number of total telemedicine visits peaked, and has since declined, it remains well above pre-PHE levels.¹² That decline, however, does not mean that telemedicine will not be used more in the future. Telemedicine allows continued relationships between patients and providers after both office-based and telemedicine visits. Patients and physicians alike also now expect telemedicine to continue to be a component of healthcare delivery.

The rapid expansion of telemedicine has at the same time led to concerns regarding fraud and abuse, patient safety and access inequity. While the PHE led to rapid expansion of telemedicine, counties in the United States with lower median income, less broadband availability, and less pre-PHE telemedicine use continue to utilize telemedicine at a far lesser rate than other counties.³ Additional patient groups have also experienced inequity of telemedicine access, including older adults, those with limited English proficiency, and people from certain racial and ethnic minority groups. In 2019, despite the ubiquitous appearance of smartphone and related devices availability, 25 million Americans lacked internet access, while 14 million people did not have equipment capable of sharing or playing video images, such as a laptop, pc computer, smartphone, tablet or other device. Specifically, 18 percent of adults aged 65 or older did not have internet access at home, 13 percent of people living in non-metropolitan areas lacked internet access, and seven

¹ Cortex C, Mansour O, Qato DM, Stafford R, Alexander C. Changes in Short-term, Long-term, and Preventative Care Delivery in US Office-Based and Telemedicine Visits During the COVID-19 Pandemic. *Jama Health Forum*. 2021;2(7):e211529. Doi:10.1001/jamahealthforum.2021.1529

² Mehrotra A, Chernew M, Linetsky D, Hatch H, Cutler D, Schneider E. The Impact of COVID-19 on Outpatient Visits in 2020: Visits Remained Stable, Despite a Late Surge in Cases. The Commonwealth Fund. 22 Feb 2021.

³ Patel S, Rose S, Barnett M, Huskamp H, Uscher-Pines L, Mehrotra A. Community Factors Associated with Telemedicine Use During the COVID-19 Pandemic. *Jama Netw Open*. 2021;4(5):e2110330. Doi:10.1001/jamanetopen.2021.10330.

percent living in metropolitan areas lacked internet access.⁴ These marginalized and minoritized communities may be left behind despite advancements in telemedicine and improved access to care, unless such inequities are addressed.

Telemedicine is one component of the delivery of healthcare, and it can vary in quality, appropriateness and usefulness. It is important that as telemedicine continues to be utilized, regulatory agencies balance expanding regulatory opportunities for the adoption of telemedicine technologies with ensuring public health and safety. To address the challenges and evolving use of telemedicine, as well as apply lessons learned from the COVID-19 pandemic, Kenneth B. Simons, MD, the Chair of the Federation of State Medical Boards (FSMB), appointed the Workgroup on Telemedicine in May of 2021 to revise and expand the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (2014)* to offer recommendations to state medical and osteopathic boards (hereinafter referred to as “medical boards” and/or “boards”), health care providers and patients. The Workgroup was charged with evaluating the impact of license waivers and modifications on the practice of medicine across state lines; evaluating the easing of geographic, site-specific and modality restrictions on the practice of telemedicine and the impact on patient access and care; reviewing current state and federal legislative, policy and regulatory trends; and evaluating the appropriate use of telemedicine during a public health emergency versus nonemergent/nonurgent times.

This new policy document provides guidance to state medical boards for regulating the use of telemedicine technologies in the practice of medicine, while raising awareness for licensees and patients alike as to the appropriate standards of care in the delivery of medical services⁵ via telemedicine technologies. It is the intent of the workgroup to offer a model policy for use by state medical boards and lawmakers to expand regulatory opportunities and enable wider, appropriate adoption of telemedicine technologies for delivering care while ensuring the public’s health and safety.

In developing the guidelines that follow, the workgroup took into account lessons learned from the PHE and conducted a comprehensive review of extant state and federal statutes and regulations, telemedicine technologies currently in use and proposed/recommended standards of care, and identified and considered existing standards of care applicable to telemedicine developed and implemented by several state medical boards.

⁴ Amin K, Rae M, Ramirez G, Cox C. How Might Internet Connectivity Affect Health Care Access? Peterson-KFF Health System Tracker. December 14, 2020. <https://www.healthsystemtracker.org/chart-collection/how-might-internet-connectivity-affect-health-care-access/#item-start>

⁵ The policy does not apply to the use of telemedicine when solely providing consulting services to another physician who maintains the physician-patient relationship with the patient, the subject of the consultation.

SECTION 1. Model Guidelines for State Medical Boards' Appropriate Regulation of Telemedicine

Section One. Preamble

The advancements and continued development of medical and communications technology have had a profound impact on the practice of medicine in the United States and offer opportunities for improving the delivery and accessibility of health care, particularly through telemedicine. Telemedicine continues to be best defined as the practice of medicine using electronic communication, information technology or other means of interaction between a licensee in one location and a patient in another location, with or without an intervening healthcare provider. State medical boards, in fulfilling their statutory duty to protect the public, often face complex regulatory challenges and patient safety concerns in adapting regulations and standards historically intended for the in-person provision of medical care to new delivery models involving telemedicine technologies, including but not limited to: 1) determining when a physician-patient relationship is established; 2) assuring privacy of patient data; 3) guaranteeing proper evaluation and treatment of the patient consistent with the same standard of care; and 4) limiting the inappropriate prescribing and dispensing of certain medications.

The [Name of Board] recognizes that using telemedicine technologies in the delivery of medical services offers potential benefits in the provision of medical care. When utilized and deployed effectively, the appropriate application of these technologies can reduce inequities and enhance medical care by facilitating communication with physicians and their patients or other health care providers through such means as, but not limited to, obtaining medical histories, performing virtual patient examinations, obtaining laboratory or other studies, remotely monitoring conditions, making diagnoses, giving medical advice and counseling, and prescribing medication and other treatments.

These guidelines should not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method of enabling physician-to-patient communications. Telemedicine is one component of the practice of medicine. A physician using telemedicine technologies in the provision of medical services to a patient (whether existing or new) must take appropriate steps to establish the physician-patient relationship and conduct all appropriate evaluations and history taking of the patient consistent with established, evidence-based standards of care for the particular patient presentation. When the standard of care that is ordinarily applied to an in-person encounter cannot be met by virtual means, the use of telemedicine technologies is not appropriate.

The Board has developed these guidelines to educate licensees and the public as to the appropriate use of telemedicine technologies in the practice of medicine. The [Name of Board] is committed to assuring patient access to the convenience and benefits afforded by telemedicine technologies, while promoting the responsible and safe practice of medicine by physicians.

It is the expectation of the Board that physicians who provide medical care, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of patients first;
- Maintain acceptable and appropriate standards of practice;

- Adhere to recognized ethical codes governing the medical profession;
- Properly supervise non-physician clinicians; and
- Protect patient confidentiality.

Physicians are encouraged to comply with nationally recognized health standards and codes of ethics. There should be consistent ethical and professional standards applied to all aspects of a physician's practice. A physician's professional discretion as to the diagnoses, scope of care, or treatments should not be limited or influenced by non-clinical considerations of telemedicine technologies, and physician remuneration or treatment recommendations should not be materially based on the delivery of patient-desired outcomes (i.e., a prescription or referral) or the utilization of telemedicine technologies.

Section Two. Definitions

For the purpose of these guidelines, the following definitions apply:

“Consulting physician” means a physician who evaluates a patient and relevant medical data or images through a telemedicine mode of delivery upon recommendation of a referring physician.

“Patient abandonment” means the termination of a health care physician-patient relationship without the assurance that an equal or higher level of care meeting the assessed needs of the patient’s condition is present and available.

“Remote patient monitoring” means the use of synchronous or asynchronous electronic information and communication technology to collect personal health information and medical data from a patient in one location that is transmitted to a licensee in another location for use in the treatment and management of medical conditions that require frequent monitoring.

“Static online questionnaire” means an internet questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast with an adaptive, interactive, and responsive online interview.

“Telemedicine” means the practice of medicine using electronic communications, information technology or other means between a licensee in one location and a patient in another location, with or without an intervening healthcare provider. Telemedicine is not an e-mail/instant messaging conversation or fax-based interaction. It typically involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient. Telemedicine may include audio-only communications, but audio-only communications should only be used as a substitute when a patient is unable or unwilling to access live-interactive modalities or when audio-only interactions are considered the standard of care for the corresponding healthcare service being delivered.

“Telemedicine Technologies” means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location, with or without an intervening healthcare provider.

Section Three. Licensure

A physician must be licensed, or appropriately authorized, by the medical board of the state where

the patient is located. The practice of medicine occurs where the patient is located at the time that telemedicine technologies are used. Physicians who diagnose, treat, or prescribe using online service sites are engaging in the practice of medicine and must possess appropriate licensure in all jurisdictions where their patients receive care.

There are a few instances, however, where certain exceptions may permit the practice of medicine across state lines without the need for licensure in the jurisdictions where the patient is located. These exceptions to licensure are only permissible for established medical problems or ongoing workups and care plans, or in cases of prospective patient screening for complex referrals. Should medical care be sought by the patient for a different medical diagnosis or condition, the physician must refer the patient to a physician licensed in the state where the patient is located or obtain a license to practice medicine in the state where the patient is located. Specifically, these exceptions are:

Consultations and Screenings

Physician-to-Physician Consultations

The physician-to-physician consultation exception permits a consulting physician licensed in another state in which they are located to use telemedicine or other means to consult with a licensed practitioner who remains responsible for diagnosing and treating the patient in the state where the patient is located.

Prospective Patient Screening for Complex Referrals

Physicians providing specialty assessments or consultations, such as at Centers for Excellence, are not required to obtain a license in the state where the patient is located in order to screen a patient for acceptance of a referral. The out-of-state physician may then provide care via telemedicine utilizing the physician-to-physician consultation exception above. If the out-of-state physician agrees to diagnosis, counsel, or treat the patient directly, the patient must travel to the state where the physician is licensed, or the physician must obtain a license to practice medicine in the state where the patient is located.

Limited Follow-Up Care

Episodic Follow-Up Care

After a patient establishes a relationship with a physician, the patient may be travelling to other states for a limited time (e.g. vacation, business, or education) and have a need for ongoing medical care. In these instances, the physician with an established patient relationship may be best suited to provide care via telemedicine while the patient is out of the state.

If a traveling patient develops new medical conditions, the physician should refer the patient to obtain local care. If the physician becomes aware that the patient's out of state location is no longer temporary, the physician should similarly develop a plan to transition care to a physician licensed in the state where the patient is located. Physicians providing care under this exception should also be prepared to make referrals to a hospital or to a local specialist who can step in and assist, especially in cases of devolving medical or mental status.

Follow-up After Travel for Surgical/Medical Treatment

Due to the rarity or severity of a diagnosis or necessary treatment, a patient may choose to travel specifically to obtain specialty care at a medical center located in another state. In this situation, a significant portion of the diagnosis and treatment of the patient should occur in the physician's state of licensure, to include but not limited to, a surgical or procedural intervention. After the

workup, procedure, or treatment is performed, the patient may return to their own state of residence and require additional follow-up care. When this follow-up can be effectively provided virtually, physicians should be allowed to utilize telemedicine without obtaining a license to practice in the state where the patient resides. Physicians providing out-of-state care under this exception should ensure that their patients have backup plans to receive care locally if changes in their medical condition make that necessary.

To avoid confusion about when a physician does or does not require a license to practice across state lines, states are encouraged to consider various means of license portability. States may promote license portability by joining national compacts, such as the Interstate Medical Licensure Compact, as one mechanism to help physicians achieve necessary multi-state licensure to legally provide care to patients in other states.

Section Four. Standard of Care

A practitioner who uses telemedicine must meet the same standard of care and professional ethics as a practitioner using a traditional in-person encounter with a patient. The failure to follow the appropriate standard of care or professional ethics while using telemedicine may subject the practitioner to discipline by the medical board.

Scope of Practice

A practitioner who uses telemedicine should ensure that the services provided are consistent with the practitioner's scope of practice, including the practitioner's education, training, experience and ability. Physicians may supervise and delegate tasks via telemedicine technologies so long as doing so is consistent with applicable laws.

Establishment of a Physician-Patient Relationship

The health and well-being of patients depends upon a collaborative effort between the physician and patient.⁶ The relationship between the physician and patient is complex and is based on the mutual understanding of the shared responsibility for the patient's health care. Although it may be difficult in some circumstances to precisely define the beginning of the physician-patient relationship, particularly when the physician and patient are in separate locations, it tends to begin when an individual with a health-related matter seeks care from a physician. The relationship is clearly established when the physician agrees to undertake diagnosis and treatment of the patient, and the patient agrees to be treated, whether or not there has been an in-person encounter between the physician (or other appropriately supervised health care practitioner) and patient. A physician-patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any requirement of a prior in-person meeting, so long as the standard of care is met.

The physician-patient relationship is fundamental to the provision of acceptable medical care. It is the expectation that physicians recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a physician-patient relationship. A physician is discouraged from rendering medical advice and/or care using telemedicine technologies without (1) fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient; (2) disclosing and validating the provider's identity, location, and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special

⁶ American Medical Association, Council on Ethical and Judicial Affairs, *Fundamental Elements of the Patient-Physician Relationship* (1990), available at <http://www.ama-assn.org/resources/doc/code-medical-ethics/1001a.pdf>.

informed consents regarding the use of telemedicine technologies. An appropriate physician-patient relationship has not been established when the identity of the physician may be unknown to the patient. If available, a patient should be able to select an identified physician for telemedicine services, not be assigned to a physician at random, and have access to follow-up care.

Evaluation and Treatment of the Patient

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Gathering clinical history to make a diagnosis is often an iterative process and physicians need to have the opportunity and ability to ask iterative follow-up questions. If an evaluation requires additional ancillary diagnostic testing under the standard of care, the physician must complete such diagnostics, arrange for the patient to obtain the needed testing, or refer the patient to another provider. Additionally, as part of meeting the standard of care, physicians must use digital images, live video, or other modalities as needed to make a diagnosis if the standard of care in-person would have required physical examination. Treatment and consultation recommendations made in a virtual setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in in-person settings. Diagnosis, prescribing, or other treatment based solely on static online questionnaires, or those that do not obtain all of the information necessary to meet applicable standards of care, are not acceptable. Physicians practicing telemedicine utilizing adaptive questionnaires must have the ability to ask follow-up questions or obtain further history, especially when doing so is required to collect adequate information to appropriately diagnosis or treat.

Telemedicine technologies, where prescribing may be contemplated, must implement measures to uphold patient safety in the absence of a traditional physical examination. Measures to assure informed, accurate, and error prevention prescribing practices (e.g. integration with e-Prescription systems) are encouraged. To further assure patient safety in the absence of a physical examination, telemedicine technologies should limit medication formularies to ones that are deemed safe.

Prescribing medications via telemedicine, as is the case during in-person care, is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each prescription issued during a telemedicine encounter must be evaluated by the physician in accordance with state and federal laws, as well as current standards of practice, and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, physicians may exercise their judgment and prescribe medications as part of telemedicine encounters.

Informed Consent, Disclosure, and Functionality of Online Services Making Available Telemedicine Technologies

Evidence documenting appropriate patient informed consent for the use of telemedicine technologies must be obtained and maintained. Appropriate informed consent should, as a baseline, include the following terms:

- Identification of the patient and the patient's location
- Identification of the physician, the physician's credentials, and the physician's practice location;
- Types of transmissions permitted using telemedicine technologies (e.g. prescription refills,

- patient education, etc.);
- The patient agrees that the physician determines, in conjunction with applicable laws, whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details on security measures taken with the use of telemedicine technologies, such as encrypting data, enabling password protection of data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

Online services used by physicians providing medical services using telemedicine technologies should clearly disclose:

- Specific services provided;
- Contact information for physician;
- Licensure and qualifications of physician(s) and associated healthcare providers;
- Fees for services and how payment is to be made;
- Financial interests, other than fees charged, in any information, products, or services provided by a physician;
- Appropriate uses and limitations of the site, including emergency health situations;
- Uses and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;
- To whom patient health information may be disclosed and for what purpose;
- Rights of patients with respect to patient health information; and
- Information collected and any passive tracking mechanisms utilized.

Online services used by physicians providing medical services using telemedicine technologies should provide patients a clear mechanism to:

- Access, supplement and amend patient-provided personal health information;
- Provide feedback regarding the online platform and the quality of information and services; and
- Register complaints, including information regarding filing a complaint with the applicable state medical and osteopathic board(s).

Online services must have accurate and transparent information about the online platform owner/operator, location, and contact information, including a domain name that accurately reflects the identity.

Advertising or promotion of goods or products from which the physician receives direct remuneration, benefits, or incentives (other than the fees for the medical care services) is prohibited. Notwithstanding, online services may provide links to general health information sites to enhance patient education; however, the physician should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, physicians should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of preferred relationships with any pharmacy is prohibited. Physicians shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from that pharmacy.

Continuity of Care and Referral for Emergent Situations

Patients should be able to seek, with relative ease, follow-up care or information from the physician [or physician's designee] who conducts an encounter using telemedicine technologies. Physicians solely providing services using telemedicine technologies with no existing physician-patient relationship prior to the encounter must make documentation of the encounter using telemedicine technologies easily available to the patient and, subject to the patient's consent, any identified care provider of the patient immediately after the encounter. Physicians have the responsibility to refer patients for in-person follow-up care when a patient's medical issue requires an additional in-person physical exam, diagnostic procedure, ancillary lab, or radiologic test.

An emergency plan is required and must be provided by the physician to the patient when the care provided using telemedicine technologies indicates that a referral to an acute care facility or ER for treatment is necessary for the safety of the patient. The emergency plan should include a formal, written protocol appropriate to the services being rendered via telemedicine technologies.

If a patient experiences an emergent situation, complication, or side effects after an encounter using telemedicine technologies, physicians have the responsibility to refer the patient to appropriate emergency care (e.g. acute care, emergency room, or another provider) to ensure patient safety. It is insufficient for physicians to simply refer all patients to the emergency department; each situation should be evaluated on an individual basis and referred based on its severity and urgency.

Physicians have an obligation to support continuity of care for their patients. Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient may be considered patient abandonment or result in discipline from the Board. A physician may not delegate responsibility for a patient's care to another person if the physician knows, or has reason to know, that the person is not qualified to undertake responsibility for the patient's care.

Medical Records

The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-physician communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine technologies. Informed consents obtained in connection with an encounter involving telemedicine technologies should also be filed in the medical record. The patient record established during the use of telemedicine technologies must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. Records should be in a format that is easily transferable to the patient. Physicians must share the medical record with the patient's primary care physician, if requested. In order to coordinate care, physicians are encouraged to automatically share records with the patient's primary care physician and other relevant members of the patient's existing care team.

Privacy and Security of Patient Records & Exchange of Information

Physicians should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules. Physicians are referred to "Standards for Privacy of Individually Identifiable Health

Information,” issued by the Department of Health and Human Services (HHS).⁷ Guidance documents are available on the HHS Office for Civil Rights Web site at: www.hhs.gov/ocr/hipaa.

Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telemedicine technologies. Such policies and procedures should address (1) privacy, (2) healthcare personnel (in addition to the physician addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology (i.e., password protected, encrypted electronic prescriptions, or other reliable authentication techniques). All patient-physician e-mail, as well as other patient-related electronic communications, should be stored and filed in the patient’s medical record, consistent with traditional record-keeping policies and procedures.

SECTION 2. Equity of Healthcare Access

When utilized and deployed effectively as a seamlessly integrated part of healthcare delivery, telemedicine can improve access and reduce inequities in the delivery of healthcare. To be effective, certain barriers must be eliminated or reduced, such as literacy gaps, access to broadband internet, and coverage and payment of telemedicine services.

Education

Physicians, health systems, and other telemedicine providers should develop educational and training information for patient groups with known limited digital literacy and access. These patient groups include, but are not limited to, older adults, people with lower incomes, limited health literacy, limited English proficiency, and people from racial and ethnic minority communities.

Broadband Internet

States should pursue policies to expand broadband access to all geographic regions, including low-cost options to those communities that are unable to afford it.

Coverage and Payment

Limiting coverage may lead to additional inequities in the delivery of healthcare via telemedicine. Health plans should provide coverage for the cost of healthcare services provided through telemedicine on the same basis and to the same extent that the carrier is responsible for coverage through in-person treatment or consultation. Health plans should not have separate networks for telehealth or select telehealth providers.

⁷ 45 C.F.R. § 160, 164 (2000).

ADDITIONAL REFERENCES

12 Va. Admin. Code § 5-31-10

45 C.F.R. § 160, 164 (2000)

Alaska Admin. Code tit. 7, § 110.639

AMA. Council on Ethical and Judicial Affairs. *Code of Medical Ethics*.

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AOA. Policy Statement – Telemedicine. H601-A/17. (July 2017)

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Iowa Admin. Code r. 653-13.11(8)

Miss. Code R. § 30-2635-5

North Carolina Medical Board. Position Statement. Telemedicine. May 2021.

Nev. Rev. Stat. § 630.304 – 630.305

Medicare Program: CY 2022 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-payment Medical Review Requirements., 86 FR 64996 (Nov. 19, 2021)(revising 42 C.F.R. § 403, 405, 410, 411, 414, 415, 423, and 425).

Wash. Admin. Code § 246-919-668

Washington Medical Commission. Policy Statement. Telemedicine. November 2021.

DRAFT

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Actively monitoring

HB 81 – Massage Therapy (Rep. Plummer and Rep. Manchester) (companion bill SB 55)

To make changes to the laws governing massage establishments and massage therapy.

Of note:

- Requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board.

Status: Introduced in the House 2/9/2021. Passed out of the House 6/24/2021. Assigned to Senate Health 9/8/2021.

HB 286 – Court of Common Pleas (Rep. Bill Seitz) (companion SB 189)

To generally change the venue in which appeal from an agency order is proper to the local court of common pleas.

Of note:

- Modifies the current Administrative Procedure Act by generally providing that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident.
- Removes the current provision that any party adversely affected by an order of an agency issued pursuant to any other adjudication may appeal, with certain exceptions, to the Franklin County Court of Common Pleas.

Status: Introduced in the House 5/4/2021. Reported out of House Civil Justice 6/23/2021. Awaiting floor vote.

SB 189 – Change venue for appeal from an agency order (Sen. Lang and Sen. McColley) (companion SB 286)

To generally change the venue in which appeal from an agency order is proper to the local court of common pleas.

Of Note:

- Modifies the current Administrative Procedure Act by generally providing that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident.
- Removes the current provision that any party adversely affected by an order of an agency issued pursuant to any other adjudication may appeal, with certain exceptions, to the Franklin County Court of Common Pleas.

Status: Introduced in the Senate 5/26/2021. Fourth hearing held in Senate Judiciary 10/26/2021.

HB 495- Create Patient Protection Act (Representative Gross)

Of Note:

- Requires specified health care professionals licensed under ORC 4730 (including physicians, PA's, anesthesiology assistants, limited branch licensees, acupuncturists and genetic counselors to offer patients medical chaperones and to establish certain mandatory reporting requirements for health care professionals.

Status: Introduced in the House and referred to the House Families Aging and Human Services 11/23/21

SB 131 – Occupational Licensing (Reciprocity) (Sen. Roegner and Sen. McColley) (companion HB 203)

To require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances.

Of note:

- Requires automatic licensure of out of state applicants that meet certain criteria.

Status: Introduced in the Senate 3/16/2021. Two hearings held in Senate Workforce and Higher Education committee hearing

HB 203 – Occupational Licenses (Rep. Powell) (companion SB 131)

To require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances.

Of Note:

- Requires automatic licensure of out of state applicants that meet certain criteria.

Status: Introduced in the House 3/10/2021. Fourth House State and Local Government hearing 10/27/2021. Amended 6/21 to remove fantasy contest operatory license.

HB 196 – Surgical Assistants (Rep. Kelly and Rep. Carruthers)

To Regulate the practice of surgical assistants.

Of Note:

- Creates a new license type for surgical assistants to be overseen by the Medical Board.

Status: Introduced in the House 3/9/2021. Second House health hearing 5/11/2021, Third House health hearing 12/7/21. OHA opposing

HB 318 – Anesthesiologist Assistants (Rep. Swearingen and Rep. Plummer)

To revise the law governing the practice of anesthesiologist assistants.

Of Note:

- Adds anesthesiologist assistants to the list of individuals authorized to prescribe drugs or dangerous drugs or drug therapy related devices during professional practice.
- Adds anesthesiologist assistant list of practitioners from which a respiratory care therapist may receive orders or prescriptions.

Status: First House Health Hearing 10/12/2021 no other hearings.

HB 356 – Drugs (Rep. Loychik and Rep. Bird)

Regards drug offenses and treatment.

Of Note:

- Proposes to reduce the abuse of prescription opioids, establish addiction treatment facilities, increase penalties for drug trafficking violations, modify penalties for drug possession, require an offender convicted of a drug possession or drug trafficking offense involving certain drugs to be subject to ten years of post-release control, allow a criminal defendant who has a severe substance use disorder involving certain drugs to be confined by a state detoxification provider while awaiting trial, create restitution work programs, and make an appropriation.
- Limits opioid prescriptions for acute pain to three days. Then, re-examination of the patient is required, and the prescriber may issue a new prescription for more than 3 days.
- Allows health related licensing board to adopt rules specifying circumstances under which a prescriber may issue an initial prescription for an opioid to treat acute pain in an amount that exceeds three days.
- In addition to the three-day limit, allows health related licensing board to adopt rules otherwise limiting the amount of an opioid that may be prescribed in a single prescription.

Status: Introduced in the House 6/21/2021. First hearing in House Criminal Justice 11/10/2021.

Closely monitoring

HB 37 – Emergency Prescription Refills (Rep. Gayle Manning)

Regards emergency prescription refills.

Of Note:

- Increases from one to three the number of times that a pharmacist may dispense, without a prescription, certain drugs to a specific patient within a 12-month period.

Status: Passed out the House 5/5/2021. Third Senate Health hearing 10/6/2021.

HB 41 – Exempt mental health care providers' info from Public Records Law (Rep. Lanese and Rep. Liston)

To exempt certain mental health care providers' residential and familial information from disclosure under the Public Records Law.

Of Note:

- Adds forensic mental health providers, mental health evaluation providers, and regional psychiatric hospital employees to the list of professions, consolidated in continuing law into the term “designated public service worker,” whose residential and familial information is exempted from disclosure under the Public Records Law.

Status: Passed out the House 2/4/2021. Second Senate Health hearing 10/6/2021.

HB 435 – Vaccinations (Rep. Carfagna and Rep. Seitz)

To extend certain timelines for qualified civil immunity and expand immunity to include hearing aid dealers and hearing aid fitters; to authorize emergency medical technicians to administer COVID-19 tests; to expressly cover COVID-19 vaccine injuries under the workers' compensation system.

Of Note:

- Sunsets June 30, 2023
- Provides vaccine mandate exemption for vaccines that have not received an FDA biologics license.
- Most public and private sector would be able to receive exemptions:
 - a) Medical contraindications; - shall provide a written statement from primary care provider
 - b) Natural immunity: - responsible for any costs or fees associated with demonstrating natural immunity to the employer.
 - c) Reasons of conscience, including religious convictions. -shall provide a written statement

Status: Introduced in the House 9/28/2021. Reported 9/29/2021. Re-referred to House Rules and Reference 9/29/2021.

SB 9 – Regulations (Sen. McColley and Sen. Roegner)

To reduce regulatory restrictions in administrative rules.

Of Note:

- Requires certain agencies to reduce the number of regulatory restrictions in their administrative rules.
- This applies to administrative agencies only and does not currently impact the Medical Board.

Status: Passed out of the Senate 3/10/2021. Third hearing in House Government Oversight held 10/28/2021.

HB 138 – Emergency Medical Services (Rep. Baldridge)

Regarding the scope of emergency medical services provided by emergency medical service personnel.

Of Note:

- Eliminates the enumeration of specific services that may be provided by emergency medical services (EMS) personnel.
- Requires the State Board of Emergency Medical, Fire, and Transportation Services to establish the scope of practice for EMS personnel through rulemaking.

- Permits EMS personnel to comply with a do-not-resuscitate order issued by a physician assistant or advanced practice registered nurse.
- Requires the medical director or cooperating physician advisory board of each EMS organization to establish protocols for EMS personnel to follow when providing services at all times.

Status: Passed out of the House 6/16/2021. Second Senate Health hearing held 10/20/2021.

HB 193 – Electronic Prescriptions (Rep. Cutrona and Rep. Pavliga)

Regarding electronic prescriptions and schedule II-controlled substances.

Of Note:

- Requires that all schedule II drugs be prescribed electronically.

Status: Passed out of the House 6/23/2021. Second Senate Health hearing 11/17/2021.

SB 55 – Massage Therapy (Sen. Brenner) (companion bill HB 81)

To make changes to the laws governing massage establishments and massage therapy.

Of Note:

- Requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board.

Status: Passed out of Senate health committee 5/19/2021.

HB 60 – Authorize medical marijuana for autism spectrum disorder (Rep. Brent and Rep. Seitz)

To authorize the use of medical marijuana for autism spectrum disorder.

Of Note:

- Allows autism spectrum disorder to be included in qualifying conditions.

Status: Introduced in the House 2/3/2021. Fourth House Health hearing 6/15/2021.

SB 150 – Physician Contracts (Sen. Johnson and Sen. Williams)

To prohibit the use of noncompete provisions in physician employment contracts.

Of Note:

- Would prohibit the use of noncompete provisions in physician employment contracts.

Status: Introduced in the Senate 3/31/2021. Third Senate Small Business and Economic Opportunity committee hearing 10/27/2021.

HB 64 – Regards fraudulent assisted reproduction (Rep. Powell)

To create the crime of fraudulent assisted reproduction and civil actions for an assisted reproduction procedure without consent.

Of Note:

- Prohibits a health care professional from purposely or knowingly using human reproductive material from a donor while performing an assisted reproduction procedure if the person receiving the procedure has not expressly consented to the use of that donor's material.
- Creates the crime of fraudulent assisted reproduction, making it a third-degree felony and allows for civil action against a fertility doctor within ten years of the offense.

Status: Introduced in the House 2/4/2021. Second House Criminal Justice hearing 3/17/2021.

SB 151 – Infant Medical Treatment (Sen. Johnson)

To establish standards for the medical treatment of certain infants and to name the act Emery and Elliot's Law.

Of Note:

- Outlines medical treatment for mothers and infants in emergency situations or infants with a disability.

Status: Introduced in the Senate 3/31/2021. Second Senate Health hearing 9/15/2021.

SB 48 – Cultural Competency (Sen. Maharath and Sen. Antonio)

To require certain health care professionals to complete instruction in cultural competency.

Of Note:

- Requires certain health care professionals to complete instruction in cultural competency and provide proof of completion at initial application for licensure and at renewal.
- Includes: dentists, nurses, pharmacists, physicians, psychologists, and social workers.

Status: Introduced in the Senate 2/3/2021. First Senate Health hearing 6/16/2021.

HB 160 – Health Estimates (Health care price transparency) (Rep. Holmes)

Regarding the provision of health care cost estimates.

Of Note:

- Authorizes the relevant regulatory boards to impose administrative remedies on a health plan issuer or health care provider who fails to comply with the bill's health care price transparency provisions.

Status: Introduced in the House 2/18/2021. First House Insurance Hearing 3/10/2021.

HB 43– Authorize public bodies to meet via video- and teleconference (Rep. Sobecki and Rep. Hoops)

To authorize public bodies to meet via teleconference and video conference.

Of Note:

- Allows public bodies to meet and hold hearings via teleconference or video conference.
- Requires public bodies to provide the public with access to meetings and hearings commensurate with the method in which the meeting is being conducted.

Status: First House Government Oversight hearing 2/11/2021.

SB 123 – Abortion (Sen. Roegner and Sen. O'Brien)

To enact the Human Life Protection Act to prohibit abortions based upon a condition precedent.

Of Note:

- Prohibits, as the crime of criminal abortion, a person from purposely causing or inducing an abortion by using a drug or substance or an instrument or other means.
- Provides that criminal abortion is a felony of the fourth degree.
- Provides an affirmative defense to a criminal abortion charge if the physician performed or induced the abortion, or attempted to do so, under the determination that it was necessary to prevent the woman's death or a serious risk of the substantial and irreversible impairment of a major bodily function.
- Requires the State Medical Board to revoke a physician's license to practice if the physician is guilty of abortion manslaughter, criminal abortion, or promoting abortion.

Status: Introduced in the Senate 3/9/2021. Second Senate Health Hearing 10/27/2021.

SB 161 – Surgical Smoke (Sen. Brenner)

Regards surgical smoke.

Of Note:

- Requires that not later than one year after the effective date of enactment, each ambulatory surgical facility shall adopt and implement a policy designed to prevent human exposure to surgical smoke during any planned surgical procedure that is likely to generate surgical smoke.
- The policy shall include the use of a surgical smoke evacuation system.

Status: Introduced in the Senate 4/15/2021. Second Senate Health hearing 11/10/2021.

SB 206 – Art & Music Therapists (Sen. Yuko and Sen. Brenner) (companion HB 359)

To license and regulate art therapists and music therapists.

Of Note:

- Creates a new license type for music therapists to be regulated under the Medical Board

Status: Introduced in the Senate 7/1/2021. Assigned to Senate Health 9/8/2021.

HB 221 – Advanced Practice Registered Nurses (Rep. Brinkman and Rep. Gross)

To modify the laws governing the practice of advanced practice registered nurses and to designate these provisions as the Better Access, Better Care Act.

Of Note:

- Would allow an APRN who has completed 2,000 clinical practice hours under a standard care arrangement the option to practice without a collaboration agreement.
- Allows an APRN who has not completed the required hours to enter into a standard care arrangement with an APRN who has completed 2,000 clinical practice hours.

Status: Introduced in the House 3/17/2021. Referred to House Health 3/23/2021.

HB 355 – Pregnancy (Rep. Boggs and Rep. Hicks-Hudson)

To authorize a pregnant minor to consent to receive health care to maintain or improve her life or the life of the unborn child she is carrying.

Of Note:

- Allows a pregnant minor to consent to receive health care, such as prenatal health care, health care during delivery, post-delivery health care, and family planning services, to maintain or improve her life or the life of the unborn child she is carrying.
- States that the bill does not remove or limit any person's responsibility under Ohio law to report child abuse or neglect.

Status: Introduced in the House 5/19/2021. Referred to House Families, Aging and Human Services 6/24/2021.

HB 359 – Art & Music Therapists (Rep. Russo and Rep. Callender) (companion SB 206)

To license and regulate art therapists and music therapists.

Of Note:

- Creates a new license type for music therapists to be regulated under the Medical Board

Status: Introduced in the House 6/24/2021. Referred to House State and Local Government 9/21/2021.

HB 378 – Abortion Reversal (Rep. Koehler and Rep. Fowler Arthur)

Regarding pretreatment notice about the possibility of reversing a mifepristone abortion.

Of Note:

- Prohibits a physician from performing a mifepristone abortion without both informing the patient of the possibility to reverse the mifepristone abortion if she changes her mind and providing information from the Department of Health website on assistance with reversing the effects of the mifepristone abortion
- Criminalizes violations of the previous requirements as a misdemeanor of the first degree.
- Allows a patient who a mifepristone abortion is performed on to file a wrongful death suit against an individual who fails to inform the patient of the possibility of reversal.

Status: Introduced in the House 7/15/2021. Referred to House Health 9/16/2021.

HB 388 – Vaccine Refusal (Rep. Jordan)

To prohibit taking certain actions against an individual because the individual refuses to be vaccinated against a disease.

Of Note:

- Prohibits certain discriminatory actions against unvaccinated people

Status: Introduced in the House 8/12/2021.

HB 402 – Ohio Midwife Practice Act (Rep. Boyd and Rep. Hicks-Hudson)

To regulate the practice of certified professional midwives and to name this act the Ohio Midwife Practice Act.

Of Note:

- Regulates the practice of certified professional midwives

Status: Introduced in the House 8/12/2021. Referred to House Families, Aging and Human Services 9/21/2021.

HB 496 – Regulate the Practice of Certified Midwives (Rep. Koehler)

To regulate the practice of certified nurse-midwives, certified midwives, and certified professional midwives

Of Note:

- Regulates the practice of certified professional midwives

Status: Introduced in the House 11/29/2021. Referred to House Families Aging and Human Services 12/7/21

Operationalizing

SB 6 – Join Interstate Medical Licensure Compact (Sen. Roegner and Sen. Steve Huffman)

Of Note:

- Actively working through implementation

Status: Passed out of the legislature 6/24/2021. Signed by Governor DeWine 7/1/2021. Required to be operational by 9/28/2022.

HB 110 – State Operating Budget (Rep. Oelslager)

Creates appropriations for FY 2022-2023.

Of Note:

- The Medical Board budget request was granted in the first version of the bill and remained in the final version.

Status: Passed out of the legislature 6/28/2021. Signed by Governor DeWine 6/30/2021. Provisions with appropriations are effective 6/30/2021. All other provisions are effective 9/30/2021.

Enacted but no operational changes needed

HB 6 – Modify laws governing certain professions due to COVID-19 (Rep. Roemer)

To modify the laws governing certain health professionals and educator preparation programs due to COVID-19.

Of Note:

- Allows pharmacists to administer immunization for influenza, COVID-19, and any other disease but only pursuant to prescription for persons seven or older.
- Allows pharmacists to administer immunizations for a disease to those 13 and older.
- Allows podiatrists to administer vaccinations for individuals seven and older for influenza and COVID-19.

Status: Enacted 5/14/2021. Certain provisions effective 10/9/2021.

HB 176 – Athletic Training (Rep. Carfagna and Rep. Hall)

To revise the law governing the practice of athletic training.

Of note:

- Makes changes to the law governing the practice of athletic training, including by requiring an athletic trainer to practice under a collaboration agreement with a physician or podiatrist.
- Amendment was included in the final version to prohibit an athletic trainer from administering intratendinous and intra-articular injections.

Status: Passed out of the House 5/5/2021. Passed out of the Senate 9/28/2021. Signed 10/28/2021. Effective 1/25/2022.

END