

The following rules are being circulated for comments from interested parties. The proposed changes are highlighted below.

Chapter 4731-15 Reporting Requirements

4731-15-01	Licensee Reporting Requirement; Exceptions	Proposed to Rescind
4731-15-01	Licensee Reporting Requirement; Exceptions	Proposed New Rule
4731-15-02	Healthcare Facility Reporting Requirement	Proposed to Rescind
4731-15-02	Healthcare Facility Reporting Requirement	Proposed New Rule
4731-15-03	Malpractice Reporting Requirement	Proposed to Amend
4731-15-04	Professional Society Reporting	Proposed to Amend
4731-15-05	Liability; Reporting Forms, Confidentiality and Disclosure	Proposed to Rescind

Chapter 4731-16 Impaired Practitioners

4731-16-01	Definitions	Proposed to Rescind
4731-16-01	Definitions	Proposed New Rule
4731-16-02	General Procedures in Impairment Cases	Proposed to Rescind
4731-16-02	General Procedures in Impairment Cases	Proposed New Rule
4731-16-04	Other Violations	Proposed to Rescind
4731-16-04	Other Violations	Proposed New Rule
4731-16-05	Examinations	Proposed to Rescind
4731-16-05	Examinations	Proposed New Rule
4731-16-06	Consent Agreements and Orders for Reinstatement of Impaired Practitioners	Proposed to Rescind
4731-16-06	Consent Agreements and Orders for Reinstatement of Impaired Practitioners	Proposed New Rule
4731-16-07	Treatment Provider Program Obligations	Proposed to Rescind
4731-16-08	Criteria for Approval	Proposed to Rescind
4731-16-08	Criteria for Approval for Evaluators and Treatment Providers	Proposed New Rule
4731-16-09	Procedures for Approval	Proposed to Rescind
4731-16-10	Aftercare Contracts	Proposed to Rescind
4731-16-11	Revocation, Suspension, or Denial of Certificate Of Good Standing	Proposed to Rescind
4731-16-12	Out of State Impairment Cases	Proposed to Rescind
4731-16-13	Patient Consent, Revocation of Consent	Proposed to Rescind
4731-16-14	Caffeine, Nicotine, and Over the Counter Drugs	Proposed to Rescind
4731-16-15	Patient Rights	Proposed to Rescind
4731-16-17	Requirements for One-Bite Program	Proposed to Rescind
4731-16-17	Requirements for Confidential Monitoring Program	Proposed New Rule
4731-16-18	Eligibility for One-Bite Program	Proposed to Rescind
4731-16-19	Monitoring Organization for One-Bite Program	Proposed to Rescind
4731-16-19	Monitoring Organization for Confidential Monitoring Program	Proposed New Rule

4731-16-20	Treatment Providers in the One-Bite Program	Proposed to Rescind
4731-16-20	Evaluators and Treatment Providers in the Confidential Monitoring Program	Proposed New Rule
4731-16-21	Continuing Care for One-Bite Program	Proposed to Rescind

Chapter 4731-28 Mental or Physical Impairment

4731-28-01	Mental or Physical Impairment	Proposed to Rescind
4731-28-02	Eligibility for Confidential Monitoring Program	Proposed to Rescind
4731-28-03	Participation in the Confidential Monitoring Program	Proposed to Rescind
4731-28-04	Disqualification from Continued Participation In the Confidential Monitoring Program	Proposed to Rescind
4731-28-05	Termination of the Participation Agreement For the Confidential Monitoring Program	Proposed to Rescind

The recently enacted budget bill (HB 33) contained changes to modernize the Medical Board’s approach to impairment by licensees and applicants. The statutory changes make several major changes to the Board’s current regulatory structure, including the following:

1. The definition of impairment is changed to include an inability to practice due to mental and physical health, in addition to substance use disorder.
2. The monitoring organization, Ohio Professionals Health Program (“OPHP”), will approve evaluators and treatment providers for impaired practitioners.
3. The one-bite program will be changed to the confidential monitoring program and may be available for impaired practitioners beyond the current one-time opportunity (one-bite). Some impaired practitioners may experience relapse and remain under monitoring with OPHP. The confidential monitoring program will have reporting requirements to the Board.
4. The details of evaluation and treatment will be set by clinical providers, working with OPHP, rather than having minimums based on provider type set through rule.
5. The Board will have the option to refer disciplinary monitoring to OPHP.

The following is a short description of the proposed rule changes.

Chapter 4731-15:

4731-15-01: This rule is proposed to be rescinded and replaced with a new rule that defines confidential monitoring program, monitoring organization, and duty to report statutes. The rule

also updates the reporting exemption for practitioners participating in the confidential monitoring program.

4731-15-02: This rule is proposed to be rescinded and replaced with a new rule that updates the reporting exemption for practitioners participating in the confidential monitoring program.

4731-15-03: This rule is proposed to be amended to update the language to refer to license to practice, rather than a certificate to practice and to streamline statutory references within the rule.

4731-15-04: This rule is proposed to be amended to add dietitians, respiratory care professionals, and genetic counselors.

4731-15-05: This rule is proposed to be rescinded, as many of the provisions are contained in the statutory language.

Chapter 4731-16:

4731-16-01: This rule is proposed to be rescinded and replaced with a new rule that updates the definitions to reflect the statutory changes in sections 4731.25 and 4731.251 of the Revised Code and to define continuing care and aftercare.

4731-16-02: This rule is proposed to be rescinded and replaced with a new rule that updates the processes for impairment cases under the statutory changes.

4731-16-04: This rule is proposed to be rescinded and replaced with a new rule that provides clarity that an individual's treatment for impairment will not preclude the board from taking disciplinary action on criminal acts.

4731-16-05: This rule is proposed to be rescinded and replaced with a new rule that outlines the requirements for impairment examinations ordered by the board with the statutory updates.

4731-16-06: This rule is proposed to be rescinded and replaced with a new rule that reflects that impairment includes an inability to practice according to acceptable and prevailing standards of care due to mental or physical illness in addition to substance use disorder.

4731-16-07: This rule is proposed to be rescinded. Many of the provisions of this rule have been updated and included in the proposed new rule 4731-16-08, OAC.

4731-16-08: This rule is proposed to be rescinded and replaced with a new rule that sets forth the criteria for evaluators and treatment providers approved by the monitoring organization pursuant to the statutory changes.

4731-16-09: This rule is proposed to be rescinded because the process of treatment provider approval will be completed by the monitoring organization pursuant to the statutory changes.

4731-16-10: This rule is proposed to be rescinded due to the statutory changes.

4731-16-11: This rule is proposed to be rescinded due to the statutory changes.

4731-16-12: This rule is proposed to be rescinded due to the statutory changes.

4731-16-13: This rule is proposed to be rescinded due to the statutory changes.

4731-16-14: This rule is proposed to be rescinded as it is outdated and no longer necessary.

4731-16-15: This rule is proposed to be rescinded due to the statutory changes regarding the treatment provider approval process.

4731-16-17: This rule is proposed to be rescinded and replaced with a new rule outlining the requirements of the confidential monitoring program and replacing references to the one-bite program.

4731-16-18: This rule is proposed to be rescinded due to the statutory changes.

4731-16-19: This rule is proposed to be rescinded and replaced with a new rule that outlines the requirements for the monitoring organization under the statutory changes.

4731-16-20: This rule is proposed to be rescinded and replaced with a new rule that outlines the requirements for evaluators and treatment providers under the new confidential monitoring program as set forth in the statutory changes.

4731-16-21: This rule is proposed to be rescinded to reflect the changes to the confidential monitoring program under the statutory amendments.

Chapter 4731-28:

4731-28-01: This rule is proposed to be rescinded, and the definitions of mental illness and inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness are defined in rule 4731-16-01, OAC.

4731-28-02-4731-28-05: These rules are proposed to be rescinded because the confidential monitoring program for individuals unable to practice according to acceptable and prevailing standards of care by reason of mental or physical illness will be administered by the monitoring organization under rules in chapter 4731-16, OAC.

TO BE RESCINDED

7.28.23

Ohio Administrative Code

Rule 4731-15-01 Licensee reporting requirement; exceptions.

~~(A) Licensees of the board shall be required to report as listed below:~~

~~(1) Subject to paragraph (B) of this rule, any individual licensed under Chapter 4731. of the Revised Code or any association or society of individuals licensed under Chapter 4731. of the Revised Code shall report to the board a belief that a violation of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board has occurred.~~

~~(2) Subject to paragraph (B) of this rule, any physician assistant or any association or society of physician assistants shall report to the board a belief that a violation of Chapter 4730. or 4731. of the Revised Code, or any rule of the board has occurred.~~

~~(3) Subject to paragraph (B) of this rule, any anesthesiologist assistant or any association or society of anesthesiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4760. of the Revised Code, or any rule of the board has occurred.~~

~~(4) Subject to paragraph (B) of this rule, any acupuncturist or any association or society of acupuncturists shall report to the board a belief that a violation of Chapter 4731. or 4762. of the Revised Code, or any rule of the board has occurred.~~

~~(5) Subject to paragraph (B) of this rule, any radiologist assistant or any association of radiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4774. of the Revised Code, or any rule of the board has occurred.~~

~~(B) An individual, association or society shall be relieved of the obligation to report under paragraph (A) of this rule if one of the following requirements is met:~~

~~(1) The individual or organization is an approved treatment provider under section 4731.25 of the Revised Code or the individual is an employee, agent or representative of an approved treatment~~

provider, and

~~(a) The practitioner maintains participation in treatment or aftercare in accordance with section 4731.25 of the Revised Code and any rules of the board adopted pursuant to that section; and~~

~~(b) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.~~

~~(2) The individual is a member of an impaired practitioner committee, or the equivalent, established by a hospital or its medical staff, or is a representative or agent of a committee or program sponsored by a professional association of individuals licensed under Chapter 4731. of the Revised Code to provide peer assistance to practitioners with substance abuse problems, and~~

~~(a) The practitioner has been referred for examination to an approved treatment program;~~

~~(b) The practitioner co-operates with the referral for examination and any determination that he or she should enter treatment; and~~

~~(c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.~~

(3) The individual reasonably believes all of the following:

~~(a) The practitioner has been referred for examination to an approved treatment program;~~

~~(b) The practitioner co-operates with the referral for examination and any determination that he or she should enter treatment; and~~

~~(c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.~~

~~(4) The individual is a member of a review committee described in section 2305.25 of the Revised Code and the sole source for the belief that a violation has occurred and there has been evidence or other matters produced or presented during the proceedings of such committee.~~

~~(5) The individual is otherwise prohibited from reporting to the board by a superseding state or federal law.~~

~~(6) For purposes of this paragraph any individual licensed under Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any association or society of individuals so licensed, shall report a practitioner who has, at any time during or following treatment, experienced a relapse, as that term is defined in rule 4731-16-01 of the Administrative Code. The relapsing practitioner shall self report the relapse.~~

~~(C) For purposes of paragraphs (B)(1)(b), (B)(2)(c), and (B)(3)(c) of this rule, violations of provisions of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs,~~

~~alcohol, or other substances that impair ability to practice, need not be reported if all of the following requirements are met, but if any or all of the following conditions are not met, the individual or organization shall report to the board all violations which are believed to have occurred:~~

~~(1) All acts or omissions by the practitioner which would otherwise have constituted violations occurred while the practitioner was impaired; and~~

~~(2) The practitioner has not been criminally convicted based on any such acts or omissions; and~~

~~(3) There is no reason to believe that such acts or omissions might have an adverse impact on other individuals.~~

~~(D) For purposes of section 4730.32, section 4731.224, section 4760.16, section 4762.16, or section 4774.16 of the Revised Code, and this rule, "reason to believe" or "belief" does not require absolute certainty or complete unquestioning acceptance, but only an opinion that a violation has occurred based upon firsthand knowledge or reliable information.~~

~~(E) Any report required under paragraph (A) of this rule shall be made to the board within forty-eight hours. Reporting of any belief that a violation has occurred to a review committee as described in section 2305.251 of the Revised Code or any entity other than the board does not discharge the duty or obligation to report to the board. In cases where the secretary and supervising member determined that peer review is being conducted by a review committee as described in section 2305.251 of the Revised Code for purposes of denying, determining, changing or modifying the scope of the licensee's clinical privileges, they may defer further investigation by the board while awaiting the outcome of that peer review.~~

~~(F) Any individual licensed by the board or any association or society of individuals who are licensed by the board who reports to the board a belief that a violation of Chapter 4731., Chapter 4730., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board has occurred shall be considered to be reporting pursuant to the requirements of section 4730.32, 4731.224, 4760.16, 4762.16, or 4774.16 of the Revised Code and shall be immune from civil liability as provided by division (H) of section 4730.32, division (H) of section 4731.224, division (H) of section 4760.16, division (H) of section 4762.16, or division (H) of section 4774.16 of the~~

~~Revised Code and paragraph (A) of rule 4731-15-05 of the Administrative Code. The individual, association, or society may remain anonymous by complying with all of the following actions:~~

~~(1) The individual, association, or society shall request and shall be assigned a confidential identifying number by the board.~~

~~(2) The individual, association, or society shall be responsible for notifying the board that he or she is a licensee or is an association or society of licensees and shall be responsible for maintaining the confidential identifying number in order to verify compliance with the reporting obligations of section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, or section 4774.16 of the Revised Code and this chapter.~~

~~(G) Each report pursuant to this rule shall include:~~

~~(1) The name of the practitioner or other individual in violation;~~

~~(2) The violation which is believed to have occurred; and~~

~~(3) The date(s) of and place(s) of occurrence(s), if known.~~

PROPOSED NEW RULE

7.28.23

Ohio Administrative Code

Rule 4731-15-01 Licensee reporting requirement; exceptions.

(A) As used in this chapter of the Administrative Code:

(1) “The board” means the state medical board of Ohio;

(2) “Confidential monitoring program” means a confidential non-disciplinary program for the evaluation and treatment of practitioners and applicants who are, or may be impaired under sections 4731.25 through 4731.255 of the Revised Code.

(3) “Impaired” or "Impairment" has the same meaning as used in section 4731.25(A)(2)(a) and (b) of the Revised Code. Impairment includes inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision.

(4) “Monitoring organization” means an entity that meets the requirements of section 4731.25(B) of the Revised Code and enters into a contract with the board for the operation of the confidential monitoring program for impaired practitioners and applicants, review and approval of evaluators and treatment providers in section 4731.251 of the Revised Code, and assists the board with monitoring impaired practitioners who are subject to formal disciplinary action by the board under section 4731.251(C) of the Revised Code.

(5) “Licensee” means any of the following:

(a) An individual authorized under chapter 4730. of the Revised Code to practice as a physician assistant;

(b) An individual authorized under chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine;

(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 licensed under Chapter 4762. of the Revised Code to practice as an acupuncturist;

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

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

(6) “Duty to report” includes the obligation to report violations of laws and rules under section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4759.13 of the Revised Code, section 4760.16 of the Revised Code, section 4761.19 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code, section 4778.17 of the Revised Code and this chapter of the Administrative Code.

(7) “Malpractice reporting statutes” includes the obligation to report malpractice payments under division (D) of section 4730.32 of the Revised Code, division (D) of section 4731.224 of the Revised Code, division (D) of section 4760.16 of the Revised Code, division (D) of section 4762.16 of the Revised Code, and division (D) of section 4774.16 of the Revised Code.

(B) Licensees of the board shall be required to report as listed below, subject to paragraph (C) of this rule:

(1) Any individual licensed under Chapter 4731. of the Revised Code or any association or society of individuals licensed under Chapter 4731. of the Revised Code shall report to the board a belief that a violation of Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code, or any rule of the board has occurred.

(2) Any physician assistant or any association or society of physician assistants shall report to the board a belief that a violation of Chapter 4730. or 4731. of the Revised Code, or any rule of the board has occurred.

(3) Any dietitian or any association or society of dietitians shall report to the board a belief that a violation of Chapter 4731. or Chapter 4759. of the Revised Code, or any rule of the board has occurred.

(4) Any anesthesiologist assistant or any association or society of anesthesiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4760. of the Revised Code, or any rule of the board has occurred.

(5) Any respiratory care professional or any association or society of respiratory care professionals shall report to the board a belief that a violation of Chapter 4731. or 4761. of the Revised Code, or any rule of the board has occurred.

(6) Any acupuncturist or any association or society of acupuncturists shall report to the board a belief that a violation of Chapter 4731. or 4762. of the Revised Code, or any rule of the board has occurred.

(7) Any radiologist assistant or any association of radiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4774. of the Revised Code, or any rule of the board has occurred.

(8) Any genetic counselor or any association of genetic counselors shall report to the board a belief that a violation of Chapter 4731. or 4778. of the Revised Code or any rule of the board has occurred.

(C) An individual, association or society shall be relieved of the obligation to report under paragraph (B) of this rule if one of the following requirements is met:

(1) The individual or organization is an approved treatment provider under section 4731.251 of the Revised Code, or the individual is an employee, agent, or representative of an approved treatment provider, and

(a) The licensee or applicant has been referred to the monitoring organization that conducts the confidential monitoring program;

(b) The licensee or applicant cooperates with the requirements of the confidential monitoring program and the treatment plan; and

(c) There is no reason to believe that the licensee has violated any provision of Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762, Chapter 4774., or Chapter 4778. of the Revised Code or any rule of the board other than impairment of ability to practice.

(2) The individual is a member of an impaired practitioner committee, or the equivalent, established by a hospital or its medical staff, or is a representative or agent of a committee or program sponsored by a professional association of individuals licensed under Chapter 4731. of the Revised Code to provide peer assistance to impaired practitioners, and

(a) The practitioner has been referred to the monitoring organization that conducts the confidential monitoring program under section 4731.25 of the Revised Code;

(b) The practitioner co-operates with requirements of the confidential monitoring program; and

(c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code, or any rule of the board, other than impairment of ability to practice .

(3) The individual reasonably believes all of the following:

(a) The practitioner has been referred to the monitoring organization that conducts the monitoring program under section 4731.25 of the Revised Code;

(b) The practitioner co-operates with the requirements of the confidential monitoring program; and

(c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code, or any rule of the board, other than impairment of ability to practice pursuant to section 4731.25(A)(2) of the Revised Code.

(4) The individual is a member of a review committee described in section 2305.25 of the Revised Code and the sole source for the belief that a violation has occurred is derived from evidence or other matters produced or presented during the proceedings of such committee.

(5) The individual is otherwise prohibited from reporting to the board by a superseding state or federal law.

(D) For purposes of section 4730.32, section 4731.224, section 4759.13, section 4760.16, section 4761.19, section 4762.16, section 4774.16, or section 4778.17 of the Revised Code, and this rule, "reason to believe" or "belief" does not require absolute certainty or complete unquestioning acceptance, but only an opinion that a violation may have occurred based upon firsthand knowledge or reliable information.

(E) Any report required under paragraph (B) of this rule shall be made to the board within forty-eight hours. Reporting of any belief that a violation has occurred to a review committee as described in section 2305.251 of the Revised Code or any entity other than the board does not discharge the duty or obligation to report to the board. In cases where the secretary and supervising member determined that peer review is being conducted by a review committee as described in section 2305.251 of the Revised Code for purposes of denying, determining, changing, or modifying the scope of the licensee's clinical privileges, they may defer further investigation by the board while awaiting the outcome of that peer review.

An individual, association, or society making a report of a violation of law or rule may remain anonymous by complying with all of the following actions:

(1) The individual, association, or society shall request and shall be assigned a confidential identifying number by the board.

(2) The individual, association, or society shall be responsible for notifying the board that he or she is a licensee or is an association or society of licensees and shall be responsible for maintaining the confidential identifying number in order to verify compliance with the reporting obligations of section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4759.13, section 4760.16 of the Revised

Code, section 4761.19, section 4762.16 of the Revised Code, or section 4774.16 or section 4778.17 of the Revised Code and this chapter.

(F) Each report pursuant to this rule shall include:

(1) The name of the practitioner or other individual in violation;

(2) The violation which is believed to have occurred; and

(3) The date(s) of and place(s) of occurrence(s), if known.

TO BE RESCINDED

7.28.23

Ohio Administrative Code

Rule 4731-15-02 Healthcare facility reporting requirement.

~~(A) The chief administrator or executive officer of any healthcare facility as defined in section 3702.51 of the Revised Code, including a hospital, healthcare facility operated by a health insuring corporation, ambulatory surgical facility or similar facility, shall report to the board any formal disciplinary action against any individual licensed under Chapter 4730., 4731., 4760., 4762., or 4774. of the Revised Code within sixty days after its completion.~~

~~(B) "Formal disciplinary action" means any procedure resulting in the revocation, restriction, reduction, or termination of clinical privileges for violations of professional ethics, or for reasons of medical incompetence, medical malpractice, or drug or alcohol abuse. Clinical privileges means the authorization by the healthcare facility to a person licensed under Chapter 4730, 4731., 4760., 4762., or 4774. of the Revised Code for the provision of health care services.~~

~~(C) Formal disciplinary actions shall include:~~

~~(1) Summary actions, actions that take effect notwithstanding any appeal rights that may exist and actions that result in an individual surrendering clinical privileges while under investigation during proceedings regarding the action being taken or in return for not being investigated or having proceedings held, resulting in revocation, restriction, reduction, or termination of privileges for the violations or reasons set forth in paragraph (B) of this rule; and~~

~~(2) Actions resulting in refusal or denial of clinical privileges for the violations or reasons set forth in paragraph (B) of this rule;~~

~~(D) Formal disciplinary actions shall not include any action taken for the sole reason of failure to maintain records on a timely basis, failure to pay dues, or failure to attend staff, department or section meetings.~~

~~(E) Formal disciplinary actions need not be reported if:~~

~~(1) The practitioner has been referred for examination to an approved treatment program; and~~

~~(2) The practitioner cooperates with the referral for examination and any determination that he should enter treatment; and~~

~~(3) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.~~

~~(F) Each report shall include:~~

~~(1) The name and address of the facility reporting;~~

~~(2) The practitioner's name and license number;~~

~~(3) The action taken by the facility;~~

~~(4) The date of the action taken by the facility;~~

~~(5) The effective date of the action taken by the facility; and~~

~~(6) A summary of the underlying facts leading to the action.~~

~~(G) A facility's timely filing with the board of a copy of the national practitioner data bank adverse action report shall satisfy the reporting requirement of this rule when, upon contact by the board, the reporting facility verifies that the filing of the report has been approved by the peer review committee which reviewed the case or by the governing board of the facility.~~

~~(H) Any request for patient records by the board as provided under division (A) of section 4730.32 of the Revised Code, division (A) of section 4731.224 of the Revised Code, division (A) of section 4760.16 of the Revised Code, division (A) of section 4762.16 of the Revised Code, or division (A) of section 4774.16 of the Revised Code shall be made by certified mail directed to the chief administrator or executive officer of the facility. Failure to provide the board with the requested certified copies of patient records within thirty days of receipt of that request shall constitute a failure to comply with the applicable reporting requirements, unless the board has granted a prior extension in writing.~~

PROPOSED NEW RULE

7.28.23

Ohio Administrative Code

Rule 4731-15-02 Healthcare facility reporting requirement.

(A) The chief administrator or executive officer of any healthcare facility as defined in section 3702.51 of the Revised Code, including a hospital, healthcare facility operated by a health insuring corporation, ambulatory surgical facility, or similar facility, shall report to the board any formal disciplinary action against any individual licensed by the board within sixty days after its completion.

(B) "Formal disciplinary action" means any procedure resulting in the revocation, restriction, reduction, or termination of clinical privileges for violations of professional ethics, or for reasons of medical incompetence, medical malpractice, misconduct, or impairment. Clinical privileges mean the authorization by the healthcare facility to a person licensed by the board for the provision of health care services.

(C) Formal disciplinary actions shall include:

(1) Summary actions, actions that take effect notwithstanding any appeal rights that may exist and actions that result in an individual surrendering clinical privileges while under investigation during proceedings regarding the action being taken or in return for not being investigated or having proceedings held, resulting in revocation, restriction, reduction, or termination of privileges for the violations or reasons set forth in paragraph (B) of this rule; and

(2) Actions resulting in refusal or denial of clinical privileges for the violations or reasons set forth in paragraph (B) of this rule;

(D) Formal disciplinary actions shall not include any action taken for the sole reason of failure to maintain records on a timely basis, failure to pay dues, or failure to attend staff, department, or section meetings.

(E) Formal disciplinary actions need not be reported if:

(1) The practitioner has been referred to the monitoring organization that conducts the confidential monitoring program for examination by an approved treatment program;

(2) The practitioner cooperates with the requirements of the confidential monitoring program; and

(3) There is no reason to believe that the practitioner has violated any laws or rules of the board.

(F) Each report shall include:

(1) The name and address of the facility reporting;

(2) The practitioner's name and license number;

- (3) The action taken by the facility;
- (4) The date of the action taken by the facility;
- (5) The effective date of the action taken by the facility; and
- (6) A summary of the underlying facts leading to the action.

(G) A facility's timely filing with the board of a copy of the national practitioner data bank adverse action report shall satisfy the reporting requirement of this rule when, upon contact by the board, the reporting facility verifies that the filing of the report has been approved by the peer review committee which reviewed the case or by the governing board of the facility.

(H) Any request for patient records by the board as provided under division (A) of section 4730.32 of the Revised Code, division (A) of section 4731.224 of the Revised Code, division (A) of section 4760.16 of the Revised Code, division (A) of section 4762.16 of the Revised Code, or division (A) of section 4774.16 of the Revised Code shall be directed to the chief administrator or executive officer of the facility. Failure to provide the board with the requested certified copies of patient records within thirty days of receipt of that request shall constitute a failure to comply with the applicable reporting requirements unless the board has granted a prior extension in writing.

PROPOSED TO AMEND

7.28.23

Ohio Administrative Code
Rule 4731-15-03 Malpractice reporting requirement.

(A) Any insurer providing professional liability insurance or any other entity that seeks to indemnify the professional liability of any person holding a valid license certificate issued pursuant to ~~Chapter 4730., 4731., 4760., 4762., or 4774. of the Revised Code~~ shall notify the board within thirty days after the final disposition of any written claim for damages where such disposition results in a payment which exceeds twenty-five thousand dollars.

(B) For purposes of the malpractice reporting statutes ~~division (D) of section 4730.32 of the Revised Code, division (D) of section 4731.224 of the Revised Code, division (D) of section 4760.16 of the Revised Code, division (D) of section 4762.16 of the Revised Code, division (D) of section 4774.16 of the Revised Code,~~ and this rule:

- (1) The amount of payment shall mean the aggregate gross settlement, not including court costs or other litigation costs;
- (2) The present value of future payments shall be utilized in calculating the aggregate gross settlement in cases of structured payments;
- (3) In cases involving multiple defendants where payment exceeds twenty-five thousand dollars, but no specific allocation is made in the disposition of the claim, a report shall be filed with the board for each of the defendants upon whose behalf the payment is made;
- (4) Payments made solely for damages not arising from patient care need not be reported;
- (5) The waiver of an outstanding debt is not construed as a payment.

(C) Each notification to the board shall include the following:

- (1) The name and address of the person submitting the notification;

- (2) The identity of the insurer or other indemnifying entity;
- (3) The name and address of the insured who is the subject of the claim;
- (4) The name of the person filing the written claim;
- (5) The date of final disposition;
- (6) The amount of payment;
- (7) If applicable, the identity of the court in which the final disposition took place.

(D) An insurer that reports a medical malpractice payment to the national practitioner data bank may satisfy the reporting requirement of this rule by timely filing a copy of the national practitioner data bank medical malpractice report with the board.

(E) The reports received under the malpractice reporting statutes ~~division (D) of section 4730.32 of the Revised Code, division (D) of section 4731.224 of the Revised Code, division (D) of section 4760.16 of the Revised Code, division (D) of section 4762.16 of the Revised Code, division (D) of section 4774.16 of the Revised Code,~~ and this rule ~~may be shall be listed for periodic review by the secretary and supervising member at least once every three months. The review shall determine the need to investigated for~~ possible violations of any law Chapter 4730., 4731., 4759., 4760., 4761., 4762., or 4774. or 4778. of the Revised Code or any rule of the board.

PROPOSED TO AMEND

7.28.23

Ohio Administrative Code

Rule 4731-15-04 Professional society reporting.

(A) Any professional association or society composed primarily of doctors of medicine and surgery, doctors of osteopathic medicine and surgery, doctors of podiatric medicine and surgery, practitioners of the limited branches of medicine, dietitians, anesthesiologist assistants, respiratory care professionals, physician assistants, acupuncturists, ~~or~~ radiologist assistants, or genetic counselors that suspends or revokes an individual's membership in that society for violations of professional ethics or for reasons of professional incompetence or professional malpractice shall report that action to the board within sixty days after a final decision.

(B) Each report shall include:

- (1) The licensee's name and license number;
- (2) The action taken; and
- (3) A summary of the underlying facts leading to the action.

(C) A professional association or society that reports an adverse action to the national practitioner data bank (NPDB) may satisfy the reporting requirement of this rule by timely filing a copy of the NPDB adverse action report with the board.

TO BE RESCINDED

7.28.23

Ohio Administrative Code

Rule 4731-15-05 Liability; reporting forms; confidentiality and disclosure.

~~(A) Any person, health care facility, association, society, or insurer who reports to the board or who refers an impaired practitioner to an approved treatment program shall not be subject to suit for civil damages as a result of the report, referral, or provision of information.~~

~~(B) The board shall provide, upon request, forms for reporting under the provisions of section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code, and this chapter of the Administrative Code.~~

~~(C) When a national practitioner data bank report form is accepted by the board for the purpose of satisfying the requirements of section 4731.224 of the Revised Code and this chapter of the Administrative Code, the board shall redact the following information prior to disclosing the report as authorized under section 4731.224 of the Revised Code and this chapter of the Administrative Code:~~

~~(1) National practitioner data bank identification number of the reporting entity, and~~

~~(2) All national practitioner data bank references and federal form indicia.~~

~~(D) Summaries, reports, and records received and maintained by the board pursuant to section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code and this chapter of the Administrative Code shall be held in confidence and shall not be subject to discovery or introduction in evidence in any federal or state civil action involving a health care professional or facility arising out of matters which are the subject of such reporting to the board.~~

~~(1) The board may only disclose the summaries and reports to hospital committees which are involved in credentialing or recredentialing the practitioner or in reviewing the practitioner's clinical~~

~~privileges, and in credentialing or recredentialing or reviewing the clinical privileges of the supervising physician of a practitioner licensed pursuant to Chapter 4730., 4760., 4762., or 4774. of the Revised Code. Such disclosure may be made through an independent credentialing service if the service merely communicates the information to the hospital committees and maintains strict confidentiality as provided in a written agreement with the board.~~

~~(2) Reports filed by an individual licensee pursuant to division (B) of section 4730.32 of the Revised Code, division (B) of section 4731.224 of the Revised Code, division (B) of section 4760.16 of the Revised Code, division (B) of section 4762.16 of the Revised Code, division (B) of section 4774.16 of the Revised Code and rule 4731-16-01 of the Administrative Code shall not be disclosed.~~

~~(E) Except for reports filed by an individual licensee pursuant to division (B) of section 4730.32 of the Revised Code, division (B) of section 4731.224 of the Revised Code, division (B) of section 4760.16 of the Revised Code, division (B) of section 4762.16 of the Revised Code, division (B) of section 4774.16 of the Revised Code and rule 4731-15-01 of the Administrative Code, a copy of any reports or summaries received by the board pursuant to section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code and Chapter 4731-15 of the Administrative Code shall be sent to the practitioner by the board. The practitioner shall have the right to file a statement with the board concerning the correctness or relevance of the information. Such statement, upon receipt by the board, shall at all times accompany that part of the record in contention.~~

~~(F) The board need not accept reports, summaries, or statements that consist of or include proceedings or records of review committees as described in section 2305.25 of the Revised Code. If the board determines that materials submitted are unacceptable, it shall return those materials to the submitting individual or entity, and provide an opportunity for submission of appropriate materials.~~