Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: State Medical Board of Ohio

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Reporting Requirements

Rule Number(s): 4731-15-01, 4731-15-02, 4731-15-03, 4731-15-04, and 4731-15-05, OAC

Date of Submission for CSI Review: 8/11/23; Amended BIA: 8/16/23

Public Comment Period End Date: 8/25/23

Rule Type/Number of Rules:

New/__2_ rules **No Change/____ rules (FYR? ___)**

Amended/__2__ rules (FYR? yes) **Rescinded/_3___ rules (FYR? yes)**

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   The rules in Chapter 4731-15, OAC, provide details regarding the requirements for healthcare facilities, professional societies and licensees to report violations of the Medical Practices Act to the Board.

   The proposed rule changes update the language to refer to reporting exemptions for individuals participating in the confidential monitoring program established in HB33, add references to all of the Board's license types, streamline statutory references and generally update the regulatory language.

   The rules are as follows:

   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

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   4731-15-01: Authorized by: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12

   Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25, 4731.251, 4759.07, 4759.13, 4760.13, 4760.16, 4761.09, 4761.19, 4762.13, 4762.16, 4774.13, 4774.16, 4778.14, 4778.17

   4731-15-02: Authorized by: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.1, 4778.12

   Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25, 4731.251, 4759.07, 4759.13, 4760.13, 4760.16, 4761.09, 4761.19, 4762.13, 4762.16, 4774.13, 4774.16, 4778.14, 4778.17

   4731-15-03: Authorized by: 4730.07, 4731.05, 4760.19, 4762.19, 4774.1

   Amplifies: 4730.32, 4731.224, 4760.16, 4762.16, 4774.16

   4731-15-04: Authorized by: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.1, 4778.12

   Amplifies: 4730.32, 4731.224, 4759.13, 4760.16, 4761.19, 4762.16, 4774.16, 4778.17

   4731-15-05: Proposed to be Rescinded

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.

   No.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   Not applicable.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The entities regulated by the rules (licensees, healthcare facilities and professional societies) are in a position to witness behavior of Medical Board licensees who violate the Board's laws and rules. Requiring these individuals and entities to report such violations to the Board protects the public through the prompt exercise of the Board's disciplinary powers, when necessary. The changes in the rules related to the reporting exemptions for impaired individuals under the confidential monitoring program established in HB 33, which will become effective on or about October 3, 2023.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The success of the rules in Chapter 4731-15 will be measured by the number of confidential complaints filed by licensees, healthcare facilities and professional societies. Prompt reporting of the violations will lead to timely review and investigation by the Board.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

   The rules were circulated to interested parties on July 28, 2023. These include the Ohio State Medical Association, the Ohio Professionals Health Program, the Academy of Medicine for Cleveland and Northern Ohio, the Osteopathic Medical Association, the Ohio Physician Assistant Association, the Ohio Society for Respiratory Care, the Ohio Academy of Nutrition and Dietetics, and all advisory councils of the Board.

10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

    The Board has worked closely with the Ohio Professionals Health Program and has incorporated suggested changes into the draft rules. No comments were received from other interested parties.

11. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

    No scientific data was used to develop the rule or measurable outcomes of the rule.

12. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

    No alternative regulations were considered. It is necessary for the Board to be the recipient of information regarding potential statutory and rule violations in order to protect the public.

13. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    The Medical Board is the only Ohio entity licensing the individuals under sections 4730, 4731, 4759, 4760, 4761, 4762, 4774, and 4778 of the Revised Code.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Notice of the proposed rules in Chapter 4731-15 will be sent to licensees and interested parties and posted on the Medical Board's website. Medical Board staff will be available to address questions that may arise.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted community includes licensees of the Board, healthcare facilities that employ or contract with licensees and professional societies for licensees.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

Licensees who fail to report violations may be subject to discipline ranging from reprimand to permanent revocation of the license. In addition, licensees subject to discipline may be subject to a fine up to $20,000. For healthcare facilities and professional societies, the duty to report can result in the use of time to report the information to the Board.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

The proposed rules are being amended to allow for a broader reporting exemption for impaired practitioners to include those who are unable to practice safely due to mental or physical health conditions in addition to substance use disorder. In addition, Rule 4731-15-05 is proposed to be rescinded as the requirements are duplicative of the statutes or no longer relevant.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

In order to protect patients from licensees who violate the Board's statutes and rules, it is necessary for other licensees, healthcare facilities and professional societies to report any violations of which they are aware. This allows for the Board to quickly address the issues and justifies any adverse impact to the regulated business community.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, the rules are uniformly applied to entities and licensees, regardless of the size of the business. This is necessary to ensure that all regulated entities and individuals are reporting violations of laws and rules to the Board so that prompt action can be taken to protect the public.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Given the potential harm to the public for noncompliance with the rules, any waiver would be inappropriate.

20. What resources are available to assist small businesses with compliance of the regulation?

The Medical Board provides information to licensees and interested parties through its website and a monthly electronic newsletter. Where needed, guidance documents are created to explain information. The Medical Board staff is available via telephone and e-mail.

TO BE RESCINDED

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.

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 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, 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

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.

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.

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., 4760., 4762., or 4774. of the Revised Code~~ or ~~any~~ rule of the board.

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

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.