



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. 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):

4731-16, OAC Impaired Practitioners

Rule Number(s): 4731-16-01, 4731-16-02, 4731-16-04, 4731-16-05, 4731-16-06, 4731-16-07, 4731-16-08, 4731-16-09, 4731-16-10, 4731-16-11, 4731-16-12, 4731-16-13, 4731-16-14, 4731-16-15, 4731-16-17, 4731-16-18, 4731-16-19, 4731-16-20, 4371-16-21

Date of Submission for CSI Review: 8/11/23 \_\_\_\_\_

Public Comment Period End Date: 8/25/23 \_\_\_\_\_

Rule Type/Number of Rules:

New/ 9 rules

No Change/ \_\_\_\_\_ rules (FYR? \_\_\_\_\_)

Amended/ \_\_\_\_\_ rules (FYR? \_\_\_\_\_)

Rescinded/ 19 rules (FYR?y)

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):**

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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.*

HB 33, effective October 3, 2023, amends Section 4731.25 and 4731.251 of the Revised Code to modify the definition of impairment to include an inability to practice due to a mental or physical condition in the definition of impairment in addition to an inability to practice due to substance use disorder. In addition, the statute creates a new confidential monitoring program administered by a monitoring organization which is a professionals health program under contract with the Board. The monitoring organization, in addition to operating the confidential monitoring program will also approve evaluators and treatment providers based on criteria set by rule, and will have the ability to monitor impaired individuals under disciplinary consent agreements or Board orders at the direction of the Board. The rules are as follows:

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

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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

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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

**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.**

Authorized by: 4731.255, 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, 4731.252, 4731.253, 4731.254, 4759.07, 4759.13, 4760.13, 4760.16, 4761.09, 4761.19, 4762.13, 4762.16, 4774.13, 4774.16, 4778.14, 4778.17

**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 rules sets forth the details as to how the Board ensures that impaired practitioners are able to practice safely, including the requirements for participation in the confidential monitoring program, the criteria for approval for evaluators and treatment providers, and for the monitoring organization.

**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 4731-16 will be measured by healthcare entities, practitioners and applicants having a clear understanding of the Board's confidential monitoring program, the eligibility requirements and how the Board addresses impaired practitioners.

**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.

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## **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 Board worked closely with the Ohio Professionals Health Program in the development of the regulations. In addition, 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 received a comment from the Ohio Professionals Health Program to make the following change to **Rule 4731-16-05(A)(2)**:

**(a) Urine, hair, or blood toxicology testing, or any combination other appropriate toxicology testing, with legal chain of custody and forensic capability protocol.**

The Board approved making this change.

The Board received general comments of support for the rule changes from the Ohio Academy of Medicine for Cleveland and Northern Ohio, the Columbus Medical Association, and the Ohio Society for Respiratory Care.

- 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?**

The rules are based on the scientific data regarding treatment for impaired practitioners and applicants.

- 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.***

The Board worked closely with the Ohio Professionals Health Program to ensure that the rules set forth a framework for impaired practitioners that is in line with clinical expertise. No alternative regulations were considered.

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**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 4731-16 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 scope of the impacted business community includes Medical Board licensees and applicants for licensure.

**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 are unable or unwilling to comply with the confidential monitoring program with the Medical Board may be subject to disciplinary action, which could include licensure suspension and a fine of up to \$20,000. Costs for impairment evaluation and treatment vary, but evaluations can range from \$900-\$4000, and treatment costs can range from \$7500-30,000.

**16. Are there any proposed changes to the rules that will reduce 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 allow for a broader reporting exemption for impaired practitioners to include those who are unable to practice safely to mental or physical health conditions in addition to substance use disorder.

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

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Providing for treatment and monitoring for impaired practitioners and applicants ensures safety for patients. The rules also require reporting to the Medical Board for possible license suspension if the practitioner or applicant fails to comply with confidential treatment and monitoring.

### **Regulatory Flexibility**

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

The rules are uniformly applied to all practitioners and applicants with impairment, regardless of the size of the business. This is necessary to ensure that impaired practitioners are receiving appropriate treatment and monitoring for public protection.

**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

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TO BE RESCINDED

4731-16-01

**Definitions.**

As used in this chapter of the Administrative Code:

- (A) "Impairment" means 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. Impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.
- (B) "Relapse" means any use of, or obtaining for the purpose of using, alcohol or a drug or substance that may impair ability to practice, by someone who has received a diagnosis of and treatment for chemical dependency or abuse, except pursuant to the directions of a treating physician who has knowledge of the patient's history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency. An instance of use that occurs during detoxification treatment or inpatient or residential treatment before a practitioner's disease of addiction has been brought into remission does not constitute a relapse.
- (C) "Approved treatment provider" means a treatment provider approved pursuant to section 4731.25 of the Revised Code and this chapter of the Administrative Code.
- (D) "The board" means the state medical board of Ohio.
- (E) "Sobriety" means abstinence from alcohol, and from drugs or substances that may impair ability to practice, except pursuant to the directions of a treating physician who has knowledge of the patient's history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency.
- (F) "Order" for a controlled substance or other drug means a preprinted order or standing order as defined in rule 4729-5-01 of the Administrative Code.
- (G) "Impaired physician committee" includes health committees, physician assistance committees, peer support committees, and similar bodies.
- (H) "Massage therapist or cosmetic therapist" means a person who holds or has applied for a certificate to practice massage therapy or cosmetic therapy, or both, and who does not currently hold or have a pending application for any other certificate issued by the board.



4731-16-01

Definitions.

As used in this chapter of the Administrative Code:

- (A) “Applicant” has the same meaning as used in section 4731.25(A)(1) of the Revised Code.
- (B) “Approved evaluator or treatment provider” means an evaluator or treatment provider approved by the monitoring organization pursuant to section 4731.251 of the Revised Code and this chapter of the Administrative Code.
- (C) “The board” means the state medical board of Ohio.
- (D) “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.
- (E) “Continuing care” or “Aftercare” means regular treatment sessions following the successful completion of primary treatment which are facilitated by a licensed healthcare provider to address ongoing recovery issues and are provided by a treatment provider approved by the monitoring organization.
- (F) “Impaired” or “Impairment” has the same meaning as used in section 4731.25(A)(2)(a) and (b) of the Revised Code. Impairment includes the inability to practice according to acceptable and prevailing standards of care by reason of mental illness, mental disorder, or physical illness, including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills. Impairment includes the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision.
- (G) “Impaired physician committee” includes health committees, physician assistance committees, peer support committees, and similar bodies.
- (H) “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.
- (I) “Practitioner” has the same meaning as used in section 4731.25(A)(3) of the Revised Code.

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4731-16-02

**General procedures in impairment cases.**

- (A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, it may compel the individual to submit to a mental or physical examination, or both.
- (1) Such examinations shall be undertaken by an approved treatment provider designated by the board.
  - (2) The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired.
  - (3) Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.
- (B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, the following general pattern of action shall be followed:
- (1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.
    - (a) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised

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Code, or division (B)(6) of section 4778.14 of the Revised Code unless other investigation produces reliable, substantial, and probative evidence demonstrating impairment.

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

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

- (ii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who does not meet the criteria set forth in paragraph (B)(3)(a)(iii) of this rule, the required treatment shall include intensive outpatient treatment meeting the requirements of paragraph (A)(13) of rule 4731-16-08 of the Administrative Code. The required intensive outpatient treatment must include a minimum of twenty treatment sessions over no less than five consecutive weeks with the following exception: If the massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor has previously completed an intensive outpatient treatment program of at least twenty treatment sessions over no less than five consecutive weeks and has maintained sobriety for at least one year following completion of that intensive outpatient treatment, the treatment required shall be determined by the treatment provider.
  - (iii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who was investigated by the board for possible impairment as part of a previous application for or while holding any license issued by the board other than a license to practice massage therapy, dietetics, respiratory care, as a radiologist assistant, or as a genetic counselor, the required treatment shall be in compliance with paragraph (B)(3)(a)(i) of this rule.
- (b) Evidence of continuing full compliance with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and with any consent agreement or order of the board then in effect;
  - (c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for this

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determination. A physician who is the medical director of a treatment provider approved under section 4731.25 of the Revised Code and this chapter of the Administrative Code may perform such an assessment without prior board approval.

- (4) Subject to the provisions of paragraph (D) of this rule, the board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or after the board has issued a final order in lieu of a consent agreement.
  - (5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission by the individual to the board, for at least two years, of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.
- (C) In cases where the board has initiated a disciplinary action for violations of any provisions of Chapter 4731., Chapter 4730., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code or any of its rules in addition to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code, the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:
- (1) If the board permanently revokes a license, the individual shall not be eligible for further consideration for licensure or license reinstatement;
  - (2) If the board imposes a period of ineligibility for licensure, the individual shall not be eligible for licensure or license reinstatement until the period of ineligibility has lapsed;
  - (3) If the board imposes an indefinite period of ineligibility, licensure or license reinstatement shall depend upon successful completion of the requirements in

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paragraphs (B)(3) and (B)(4) of this rule and determination by the board that the period of suspension or ineligibility served is commensurate with the violations found.

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

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

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- (10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are not circumstances warranting the initiation of disciplinary action.

4731-16-02

General procedures in impairment cases.

(A) Should the board have reason to believe that any practitioner or applicant is impaired, it shall refer the individual to the monitoring organization. In addition, upon notification by the monitoring organization that the practitioner or applicant is not eligible for the confidential monitoring program, the board may compel the individual to submit to a mental or physical examination, or both.

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

(B) In cases where the only potential disciplinary violation is based on impairment, the Board may do the following:

- (1) Upon identification by the board of reason to believe that a practitioner or applicant is impaired and not eligible for the confidential monitoring program, it may require an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.
  - (a) If the examination or examinations fail to disclose impairment, the board shall not issue discipline based on impairment unless other investigation produces reliable, substantial, and probative evidence demonstrating impairment.
  - (b) If the examination or examinations disclose impairment, or if the board has other reliable, substantial, and probative evidence demonstrating impairment, the board may initiate proceedings to suspend the license or deny the applicant. The board may issue an order of summary suspension.
- (2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:
  - (a) The individual has relapsed during or following treatment and the individual is not under a current monitoring agreement with the monitoring organization;



- (b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program and the individual is not eligible for the confidential monitoring program;
  - (c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance, and the individual is not eligible for the confidential monitoring program.
- (3) Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's license. Such demonstrations shall include but shall not be limited to the following:
- (a) Certification from a treatment provider approved by the monitoring organization under section 4731.251 of the Revised Code that the individual has successfully completed all required treatment as determined by the treatment provider and the medical director or designee of the monitoring organization. The treatment may include withdrawal management, inpatient, residential, extended residential, partial hospitalization, intensive outpatient, outpatient, continuing care, or other therapy or treatment.
  - (b) Evidence of continuing full compliance with any aftercare or continuing care contract as determined by the treatment provider and the medical director or designee of the monitoring organization and with any consent agreement or order of the board then in effect;
  - (c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board or monitoring organization for making such assessments and shall describe the basis for this determination. A physician who is the medical director of a treatment provider approved by the monitoring organization under section 4731.251 of the Revised Code may perform such an assessment without prior board approval.
- (4) The board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or

after the board has issued a final order in lieu of a consent agreement.

(5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring, which may be completed by the monitoring organization at the discretion of the board, shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, if applicable.

(C) In cases where the board has initiated a disciplinary action for violations other than for impairment and the practitioner or applicant is participating in the confidential monitoring program or is under a board order or consent agreement for impairment, the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:

(1) If the board permanently revokes a license, the individual shall not be eligible for further consideration for licensure or license reinstatement;

(2) If the board imposes a period of ineligibility for licensure, the individual shall not be eligible for licensure or license reinstatement until the period of ineligibility has lapsed;

(3) If the board imposes an indefinite period of ineligibility, licensure or license reinstatement shall depend upon successful completion of the requirements in paragraphs (B)(3) and (B)(4) of this rule and determination by the board that the period of suspension or ineligibility served is commensurate with the violations found.

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TO BE RESCINDED

4731-16-04

**Other violations.**

For purposes of board disciplinary action for violations of any board rule or any provision of Chapter 4731., Chapter 4730., Chapter 4760. or Chapter 4762. of the Revised Code other than division (B)(26) of section 4731.22 of the Revised Code, division (B)(5) of section 4730.25 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code or division (B)(6) of section 4762.13 of the Revised Code, impairment shall not excuse acts which result in conviction or which might, as determined by the board, have an adverse impact on other individuals. Such acts shall constitute independent basis for disciplinary action.

4731-16-04

**Other violations.**

For purposes of board disciplinary action for violations of any board rule or law, impairment shall not excuse acts which result in a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony, a misdemeanor committed in the course of practice, or a misdemeanor involving moral turpitude, the commission an act that constitutes a felony, misdemeanor in the course of practice, or misdemeanor of moral turpitude, in this state, or which might, as determined by the board, have an adverse impact on other individuals. Such acts shall constitute independent basis for disciplinary action.

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TO BE RESCINDED

4731-16-05

**Examinations.**

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

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

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- (b) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who does not meet the criteria set forth in paragraph (A)(3)(c) of this rule:
    - (i) Outpatient assessment that meets the requirements of paragraphs (A)(1) and (A)(2) of this rule;
    - (ii) Any other requirements as identified by the board or treatment provider. Psychiatric evaluation is not required in an examination administered under this paragraph unless the need for such an evaluation is identified by the board of the treatment provider.
  - (c) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who was investigated by the board for possible impairment as part of a previous application for or while holding any certificate issued by the board, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.
- (B) A diagnosis made by an approved treatment provider based on an examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4778.14 of the Revised Code shall be made solely for the purpose of providing evidence for use by the board. A licensee or applicant who undergoes an examination ordered by the board but who refuses to authorize the treatment provider to release reports or information to the board shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence as provided in division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code.
- (C) The report issued pursuant to an examination ordered by the board shall be submitted to the board within five days following completion of the examination.

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

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4731-16-05

Examinations.

(A) Any impairment examination of an applicant or practitioner ordered by the board and performed by an evaluator or treatment provider approved by the monitoring organization and under contract with the board shall include all of the following:

(1) Comprehensive evaluation pertinent to the reasons for referral, including:

- (a) Routine laboratory tests;
- (b) Psychiatric evaluation, if applicable;
- (c) Comprehensive biopsychosocial assessment; and
- (d) Physical examination, if applicable.

(2) For individuals referred for examination related to substance use disorder, the evaluation shall also include:

- (a) Urine, hair or blood toxicology testing, or any other appropriate toxicology testing, with legal chain of custody and forensic capability protocol;
- (b) Corroborating interviews of at least two persons who are close to the individual; and
- (c) Administration of at least two clinically approved substance use disorder assessment tools.

(3) The duration and type of the examination shall be determined by the evaluator or treatment provider based upon the individual's condition and based on an assessment of the impact of the potential impairment on patient safety.

(B) A diagnosis made by an approved evaluator or treatment provider based on an examination ordered by the board shall be made solely for the purpose of providing evidence for use by the board. A practitioner or applicant who undergoes an examination ordered by the board but who refuses to authorize the evaluator or treatment provider to release reports or information to the board shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

(C) The report issued pursuant to an examination ordered by the board shall be submitted to the board within five days following completion of the examination.

(D) The board may require the practitioner or applicant to submit to a drug toxicology screen at the time it serves its order to submit to an examination or at any time after it issues the examination order and before the examination is completed.



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- (1) The drug toxicology screen shall be considered part of the examination.
- (2) Refusal to submit to the drug toxicology screen immediately upon such request shall constitute failure to submit to an examination ordered by the board and shall constitute an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.
- (E) An individual ordered by the board to an examination who refuses to authorize the evaluator or treatment provider to contact any person identified by the evaluator or treatment provider as being appropriate for the purpose of conducting a corroborating interview as part of the examination shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered into without the taking of testimony or presentation of evidence.

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TO BE RESCINDED

4731-16-06

**Consent agreements and orders for reinstatement of impaired practitioners.**

(A) The written consent agreement required under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code or division (F)(2) of section 4762.13 of the Revised Code and rule 4731-16-02 of the Administrative Code prior to reinstatement of a suspended license, or any board order entered in lieu of a consent agreement, shall require, at a minimum, the following probationary and limiting terms:

- (1) Obedience of all federal, state, and local laws, and all rules governing practice in Ohio;
- (2) Submission of quarterly declarations under penalty of perjury stating whether there has been compliance with all conditions of the consent agreement;
- (3) Periodic appearances before the board or its representatives as requested;
- (4) Notification to the board of departures or absences from Ohio. Periods of departure or absence shall not reduce the probationary term, unless otherwise determined by motion of the board for absences of three months or longer, or by the secretary or the supervising member of the board for absences of less than three months, in instances where the board can be assured that probationary monitoring is otherwise being performed;
- (5) Maintenance of a log of all controlled substances, and other drugs as directed by the board, which the practitioner prescribes, orders, personally furnishes, or administers, where appropriate;
- (6) Prohibition of authority to prescribe, administer, personally furnish, order, or possess controlled substances and, as directed by the board, other substances which may impair ability to practice, where appropriate;
- (7) Abstinence from the use of alcohol;
- (8) Abstinence from the use or personal possession of drugs, except those prescribed, administered, or dispensed by another person so authorized by law who has knowledge of the patient's history and of the disease of addiction;
- (9) Submission of witnessed urine or blood samples upon request of the board, and without prior notice;

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- (10) Undertaking and maintaining participation in a self help support group acceptable to the board, such as alcoholics anonymous or narcotics anonymous, with evidence of compliance to be provided to the board in each quarterly report;
- (11) Undertaking psychiatric evaluation, and, where appropriate, continuing treatment acceptable to the board, with evidence of compliance to be provided in each quarterly report;
- (12) Monitoring of progress and status by a physician approved by the board, with reports to be provided to the board quarterly;
- (13) Prior approval by the board of any practice arrangements or any health care field employment, where appropriate;
- (14) Copies of the agreement to be provided by the individual to all of the following during the effective period of the agreement or board order:
  - (a) All employers or prospective employers, entities with which the individual contracts or seeks to contract to provide health services or receive training, the chief of staff at each hospital where the individual has or applies for privileges, and all persons and entities that provide the individual chemical dependency treatment or monitoring; and
  - (b) By certified mail, the proper licensing authority of any state or jurisdiction in which the individual holds or applies for any professional license.
- (15) Contacting an appropriate impaired physicians committee, such as the physician health program, to arrange for assistance in recovery or aftercare;
- (16) Continuing compliance with the terms of the aftercare contract entered into with the treatment provider, provided, that where terms of the aftercare contract conflict with the terms of the consent agreement or board order, the terms of the consent agreement or board order shall control;
- (17) Continuing authorization, through appropriate written consent forms, for disclosure by the treatment provider to the board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations;
- (18) Minimum probationary term of at least five years, except that a practitioner

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who first applies for licensure or license restoration after receiving treatment for impairment may be given probation of less than five years if the practitioner demonstrates continuous current sobriety of more than one year but less than five years, and a practitioner who first applies for licensure or license restoration after receiving treatment for impairment may be licensed without probation if the practitioner demonstrates continuous current sobriety of at least five years;

- (19) Periods during which the probationer is not in compliance with all probationary terms, or during which all probationary monitoring provisions have not yet been implemented, as determined by the secretary of the board, shall not reduce the term of probation;
  - (20) No requests by the probationer for modifications to probationary terms for at least one year; and
  - (21) Prohibition of consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.
- (B) A violation of any term of the consent agreement or board order described in this rule shall constitute grounds to take disciplinary action in accordance with Chapter 119. of the Revised Code.

4731-16-06

**Consent agreements and orders for reinstatement of impaired applicants and practitioners.**

(A) The written consent agreement for impaired practitioners or applicants prior to reinstatement of a suspended license, or any board order entered in lieu of a consent agreement, shall require, at a minimum, the following probationary and limiting terms:

- (1) Obedience of all federal, state, and local laws, and all rules governing practice in Ohio;
- (2) Submission of quarterly declarations attesting whether there has been compliance with all conditions of the consent agreement;
- (3) Periodic appearances before the board, its representatives, or the monitoring organization as requested;
- (4) Notification to the board of departures or absences from Ohio. Periods of departure or absence shall not reduce the probationary term, unless otherwise determined by the secretary or the supervising member of the board, in instances where the board can be assured that probationary monitoring is otherwise being performed;
- (5) Maintenance of a log of all controlled substances, and other drugs as directed by the board, which the practitioner prescribes, orders, personally furnishes, or administers, where appropriate;
- (6) Prohibition of authority to prescribe, administer, personally furnish, order, or possess controlled substances and as directed by the board, other substances which may impair ability to practice, where appropriate;
- (7) Abstinence from the use of alcohol, where appropriate;
- (8) Abstinence from the use or personal possession of drugs, except those prescribed, administered, or dispensed by another person so authorized by law who has knowledge of the patient's history and of the disease of addiction, where appropriate;
- (9) Submission of urine, blood, or other toxicology samples upon request of the board or the monitoring organization, and without prior notice, where appropriate;
- (10) Undertaking and maintaining participation in a self-help support group acceptable to the board or the monitoring organization, such as alcoholics anonymous or narcotics anonymous, where appropriate, with evidence of compliance to be provided in each quarterly report;
- (11) Undertaking psychiatric evaluation, and, where appropriate, continuing

treatment acceptable to the board or the monitoring organization, with evidence of compliance to be provided in each quarterly report;

(12) Monitoring physical medical condition, where appropriate;

(13) Monitoring of progress and status by a physician or other licensed healthcare professional approved by the board or the monitoring organization, with reports to be provided in each quarterly report, where appropriate;

(14) Prior approval by the board of any practice arrangements or any health care field employment, where appropriate;

(15) Copies of the agreement to be provided by the individual to all of the following during the effective period of the agreement or board order:

(a) All employers or prospective employers, entities with which the individual contracts or seeks to contract to provide health services or receive training, the chief of staff at each hospital where the individual has or applies for privileges, and all persons and entities that provide the individual treatment or monitoring; and

(b) The proper licensing authority of any state or jurisdiction in which the individual holds or applies for any professional license.

(16) Contacting the monitoring organization to arrange for monitoring services, where appropriate;

(17) Continuing compliance with the terms of any aftercare or continuing care contract entered into with the treatment provider or healthcare provider, provided, that where terms of the aftercare or continuing care contract conflict with the terms of the consent agreement or board order, the terms of the consent agreement or board order shall control;

(18) Continuing authorization, through appropriate written consent forms, for disclosure by the evaluator or treatment provider to the board, to treating and monitoring physicians, the monitoring organization and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations;

(19) Appropriate minimum probationary term;

(20) Periods during which the probationer is not in compliance with all probationary terms, or during which all probationary monitoring provisions have not yet been implemented, as determined by the secretary of the board, may result in the extension of the term of probation;

(21) No requests by the probationer for modifications to probationary terms for at

[least one year; and](#)

[\(22\) Prohibition of consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen, where appropriate.](#)

[\(B\) A violation of any term of the consent agreement or board order described in this rule shall constitute grounds to take disciplinary action in accordance with Chapter 119. of the Revised Code.](#)

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TO BE RESCINDED

4731-16-07

**Treatment provider program obligations.**

- (A) In order to hold a certificate of good standing pursuant to this chapter of the Administrative Code, a treatment provider must:
- (1) Report to the board the name of any practitioner suffering or showing evidence of suffering impairment as described 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 or division (B)(6) of section 4762.13 of the Revised Code who fails to comply within one week with a referral for examination;
  - (2) Report to the board the name of any impaired practitioner who fails to enter treatment within forty-eight hours following the program or provider's determination that the practitioner needs treatment;
  - (3) Require every practitioner who enters treatment to agree to a treatment contract establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare;
  - (4) Require a practitioner to suspend practice upon entry into any required inpatient treatment;
  - (5) Report to the board any failure by an impaired practitioner to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare contract during aftercare;
  - (6) Report to the board the resumption of practice of any impaired practitioner before the treatment provider has made a clear determination that the practitioner is capable of practicing according to acceptable and prevailing standards of care;
  - (7) Require that each practitioner who has completed treatment signs an aftercare contract with an approved treatment provider within one week of completion of treatment;
  - (8) Report the identity of any practitioner practicing under the terms of an aftercare contract to hospital administrators, medical chiefs of staff, and chairpersons of impaired physicians committees of all health care institutions at which the practitioner holds clinical privileges. If the practitioner does not hold clinical privileges at any health care institution, the treatment provider shall report the practitioner's identity to the impaired physicians committee of the county medical society, osteopathic academy, or podiatric medical association in



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every county in which the practitioner practices. If there are no impaired physicians committees in the county, the treatment provider shall report the practitioner's identity to the president or other designated member of the county medical society, osteopathic academy, or podiatric medical association;

- (9) Report to the board the identity of any practitioner who suffers a relapse;
  - (10) Fulfill all recordkeeping requirements applicable under state and federal laws, including the requirements set forth in paragraphs (C) and (D) of this rule; and
  - (11) In furtherance of paragraphs (A)(5), (A)(6), (A)(8), and (A)(9) of this rule, the treatment provider shall require every practitioner who submits for an evaluation or enters treatment to execute a release with respect to issuance of the reports enumerated therein.
- (B) The treatment provider shall not report to the board the identity of a practitioner who has been referred for evaluation or treatment by a party other than the board, so long as the practitioner maintains participation in accordance with requirements of section 4731.25 of the Revised Code and the practitioner has not suffered a relapse as defined in rule 4731-16-01 of the Administrative Code.
- (C) The treatment provider shall complete and maintain records, separate from all other records, containing the following information for each practitioner seen for evaluation or treatment:
- (1) Date of referral and identity of referral source;
  - (2) Date of admission for evaluation;
  - (3) Date treatment recommendations are made;
  - (4) Date referral source is notified of treatment recommendations;
  - (5) Beginning and ending dates of each treatment phase (e.g. - inpatient, intensive outpatient, extended residential treatment, and aftercare);
  - (6) Dates of all reports made under paragraph (A)(8) of this rule, and identities of individuals to whom made;

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- (7) Dates and sources of information received, if any, indicating there are grounds to believe the practitioner has relapsed during or following aftercare;
  - (8) In the event of the practitioner's refusal to execute appropriate releases under paragraph (B) of this rule, or in the event of revocation of such releases, the date that the referral source is notified that no further information can be given regarding that practitioner under federal law; and
  - (9) In the event the treatment provider is required to report to the board pursuant to one of the provisions of paragraph (A) of this rule, such report shall be made by telephone to the board's executive director or the executive director's designee as soon as practicable, and confirmed by letter mailed within seventy-two hours after the reporting requirement arises.
- (D) No later than two weeks following the end of each one year period during which the treatment provider has held a certificate of good standing under this chapter of the Administrative Code, the treatment provider shall file with the board a report containing all of the following information for that year:
- (1) Number of practitioners referred for evaluation; (including self-referrals);
  - (2) Number of practitioners evaluated;
  - (3) Number of referral sources by category (e.g., - self-referrals, board referrals, medical society referrals, referrals by colleagues);
  - (4) Number of practitioner evaluations which resulted in treatment recommendations for chemical dependency;
  - (5) Number of practitioners treated based on the treatment providers own recommendations;
  - (6) Number of practitioners treated based on transfer or referral from other treatment providers;
  - (7) Number of practitioners who entered each phase of treatment;
  - (8) Number of practitioners engaged in each phase of treatment (including those who began treatment in prior years);

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- (9) Number of practitioners who successfully completed each phase of treatment;
- (10) Number of practitioners discharged from each phase of treatment other than upon successful completion, and the rationale for each such discharge;
- (11) Number of practitioner relapses identified during aftercare and following aftercare;
- (12) Number and names of practitioners reported to the board under this chapter of the Administrative Code; and
- (13) Number and identities of referral sources notified of the treatment provider's inability to release information under federal law.

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TO BE RESCINDED

4731-16-08

**Criteria for approval.**

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

- (1) The philosophy and individualized treatment plan of the program is based on the disease concept.
- (2) The chemical dependency model of treatment is based on a twelve-step program such as alcoholics anonymous.
- (3) The program provides specialized medical and nursing care during detoxification and appropriate health care professionals during treatment phase.
- (4) The evaluation process is an objective, measurable program which uses tools and testing procedures to identify patterns, progression, and stages of recovery at appropriate times in the treatment program. The evaluation shall also emphasize patient self-assessment.
- (5) The treatment provider has a network of referral agencies or professionals which meets the needs of the practitioner and significant others in the event that the needs go beyond the program's expertise or available facilities.
- (6) The treatment provider has a variety of treatment plan options including inpatient detoxification treatment, inpatient or residential treatment, and outpatient services.
- (7) The involvement and treatment of family and significant others is provided.
- (8) The provider gives each patient who has been diagnosed as in need of treatment a written list of approved treatment providers from whom indicated inpatient or residential treatment, outpatient treatment, or aftercare can be obtained.
- (9) The provider holds certification as an alcoholism program or drug treatment program by the Ohio department of alcohol and drug addiction services, or if located outside Ohio, holds appropriate certification or registration with an agency exercising a similar function in the state in which it is located.
- (10) The provider provides advocacy services only at no cost to the patient, or provides such services only after obtaining the signature of the patient acknowledging that he or she has been notified:

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- (a) That advocacy is not treatment;
  - (b) That nothing in Chapter 4730., 4731., 4759., 4760., 4761., 4762., 4774., or 4778. of the Revised Code or this chapter of the Administrative Code requires a practitioner to obtain aftercare, monitoring or advocacy from the provider of inpatient or extended residential treatment or intensive outpatient treatment, as applicable; and
  - (c) That the practitioner's refusal to obtain aftercare, monitoring, or advocacy services from the provider of inpatient treatment or intensive outpatient treatment, as applicable, shall not constitute grounds to report to the board so long as the practitioner demonstrates that the practitioner has contracted with another approved treatment provider to receive any further recommended treatment.
- (11) The provider has the capability of making an initial examination to determine what type of treatment an impaired practitioner requires.
- (12) The provider requires that each patient who is subject to the jurisdiction of the board, who is determined to be impaired, except as provided in paragraph (A)(13) of this rule, complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The exceptions in paragraph (C) of this rule notwithstanding, the provider must personally provide the required inpatient or residential treatment and the assessment or must confirm that another approved treatment provider has provided the inpatient or residential treatment and the assessment before providing any outpatient treatment or aftercare. The inpatient or residential treatment program must have a continuing inpatient or residential patient census sufficient to provide an appropriate treatment milieu for patients receiving treatment in the inpatient or residential setting. This paragraph shall not apply to a patient who has previously completed an inpatient or residential treatment program of at least twenty-eight days if the patient was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment.
- (13) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who is determined to be impaired and who does not meet the criteria set forth in paragraph (A)(14) of this rule, complete a minimum of twenty treatment sessions over no less than five consecutive weeks of intensive outpatient treatment, after which the

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provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The intensive outpatient treatment must include:

- (a) Witnessed toxicology screens with legal chain of custody and forensic capability performed weekly at therapy sessions;
  - (b) At least three twelve-step meetings weekly;
  - (c) All treatment sessions lasting a minimum of three hours, not including time spent watching videos or participating in twelve-step meetings;
  - (d) Family education lasting at least two hours weekly.
- (14) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor who was investigated by the board for possible impairment as part of a previous application or while holding any certificate by the board other than a certificate to practice as a massage therapist, dietitian, respiratory care professional, radiologist assistant or genetic counselor, complete the inpatient or residential treatment required in paragraph (A)(12) of this rule.
- (15) If the provider did not hold approval under this chapter prior to January 1, 2001, the provider is accredited by the joint commission on accreditation of health care organizations or by CARF (commission on accreditation of rehabilitation facilities.)
- (B) A treatment provider which does not meet the criteria of paragraph (A)(1) or (A)(2) of this rule may nonetheless be considered for approval if it establishes by evidence acceptable to the board that its philosophy, individualized treatment plan, or model of treatment is based on current scientific advances in the field of chemical dependency, and that its success in treatment is comparable or superior to that obtained by treatment providers which meet all the criteria of paragraph (A) of this rule.
- (C) A treatment provider that does not meet the criteria of paragraph (A)(3) or (A)(6) of this rule because it does not offer all phases of treatment may nonetheless be considered for approval if it meets both of the following requirements.
- (1) If it does not offer detoxification treatment, its policies and procedures are structured to assure that all patients who enter treatment have completed

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detoxification where detoxification is medically indicated.

- (2) If it does not offer one or more required treatment phases (e.g. - inpatient treatment, intensive outpatient treatment, or extended residential treatment), it has affiliation agreements or working relationships with other treatment providers to which patients can be referred for any necessary treatment it does not offer.

4731-16-08

Criteria for approval for evaluators and treatment providers.

(A) In order to be approved as an evaluator or treatment provider for impaired applicants or practitioners, the evaluator or treatment provider must submit an application to the monitoring organization, which includes information regarding the areas of expertise and services provided, accreditation status, staffing composition, treatment approaches utilized, census and financial information, and other information as requested by the monitoring organization.

(B) The monitoring organization shall review individuals and entities providing evaluations and treatment to licensees and applicants who are impaired or potentially impaired.

(1) As part of the review the monitoring organization shall determine whether the individual or entity has the capability to evaluate impaired or potentially impaired practitioners or applicants for conditions which impair the ability to practice in accordance with acceptable and prevailing standards of care, including mental or physical illness, including substance use disorder.

(2) As part of the review, the monitoring organization shall determine whether the individual or entity has the capability to provide treatment to impaired practitioners or applicants, which may include withdrawal management, inpatient, residential, extended residential, partial hospitalization intensive outpatient, outpatient, continuing care, or other therapy or treatment.

(3) Evaluators or treatment providers which are facilities providing substance use disorder evaluation or treatment shall hold accreditation from one of the following:

(a) Commission on Accreditation of Rehabilitation Facilities;

(b) American Society of Addiction Medicine; or

(c) The Joint Commission.

(4) Evaluators or treatment providers which are facilities providing mental health disorder evaluation or treatment shall hold accreditation from one of the following:

(a) Commission on Accreditation of Rehabilitation Facilities; or

(b) The Joint Commission.

(5) Evaluators or treatment providers who are individual physicians or other licensed healthcare professionals shall provide evidence of education, training, and experience treating the relevant diseases or conditions.

(C) The monitoring organization shall prepare of list of approved evaluators and



treatment providers and make that available to practitioners or applicants referred to the monitoring organization.

(D) The monitoring organization shall provide annual training to evaluators and treatment providers regarding the eligibility requirements for the confidential monitoring program, the board's statutes, rules, and policies regarding impairment, and evaluator and treatment provider reporting requirements.

(E) The monitoring organization shall periodically review the operations and outcomes of the evaluators and treatment providers to determine whether the standard of care is being met. If the monitoring organization determines that any evaluators or treatment providers no longer meet the standard of care, the monitoring organization may remove the evaluator or treatment provider from the list provided to impaired or potentially impaired licensees and applicants.

(F) The approved evaluator or treatment provider shall do the following:

(1) Develop an individualized treatment plan for every practitioner or applicant who enters treatment including any required supervision or restrictions of practice during treatment;

(2) Require a practitioner to suspend practice as required by the treatment provider or the monitoring organization medical director or designee;

(3) Report to the monitoring organization any instances of violations of this chapter, including any practitioner or applicant who due to impairment present an imminent danger to oneself or the public and any practitioner or applicant who is unwilling or unable to complete or comply with the terms of evaluation, treatment, or monitoring;

(4) Report to the monitoring organization the resumption of practice of any impaired practitioner before the treatment provider and medical director or designee of the monitoring organization has made a clear determination that the practitioner is capable of practicing according to acceptable and prevailing standards of care;

(5) Fulfill all recordkeeping requirements applicable under state and federal laws, including completing and maintaining records for each practitioner and applicant seen for evaluation and treatment; and

(6) Require every practitioner or applicant who submits for an evaluation or enters treatment to execute a release with respect to issuance of the required reports to the monitoring organization.

(G) Each quarter, the evaluator or treatment provider shall provide to the monitoring organization information regarding licensees or applicants seen for evaluation or treatment under the confidential monitoring program, as determined by the

monitoring organization.

(H) The evaluator or treatment provider shall notify the monitoring organization of the following changes prior to the effective date:

(1) Transfer of ownership of program;

(2) Change in location of the program; or

(3) Change in medical director.

(I) The evaluator or treatment provider shall not report to the board the identity of a practitioner or applicant who has been referred for evaluation or treatment by a party other than the board, so long as the practitioner or applicant maintains participation in accordance with requirements of the confidential monitoring program under section 4731.25 of the Revised Code.

(J) Nothing in this rule relieves licensees of the board of their duty to report violations of laws and rules to the board.

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TO BE RESCINDED

4731-16-09

## Procedures for approval.

(A) Following receipt of a completed application for program approval, an investigation shall be conducted by the board with respect to whether the requirements of this chapter of the Administrative Code have been met. An on-site inspection of the program may be conducted.

(B) If the board determines that the treatment provider applying meets the requirements set forth in this chapter of the Administrative Code, it shall issue its certificate of good standing.

A certificate of good standing is valid for three years unless suspended or revoked by the board for cause and is valid only for the program approved. It does not cover other programs operated by the owner. Prior to the end of the three-year period, the board will send a renewal application to the treatment provider to be completed and sent back to the board. An on-site visit may be conducted prior to renewal of the certificate.

(C) A certificate of good standing is not transferable.

(D) The treatment provider shall notify the board of any of the following changes prior to their becoming effective and these changes shall result in reevaluation of any certificate of good standing held by the treatment provider:

(1) Transfer of ownership of the program; or

(2) Change in location or locations of the program; or

(3) Change of directorship.

(E) Upon receipt of notice as provided in paragraph (D) of this rule, the board shall forward the appropriate forms in order to initiate review and investigation to determine whether a new certificate of good standing should be issued. An on-site inspection, maintaining program participant confidentiality, may be conducted in the event of a change of program location.

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TO BE RESCINDED

4731-16-10

**Aftercare contracts.**

- (A) Within one week of completing treatment, the practitioner shall enter into an aftercare contract with an approved treatment provider.
- (B) . The aftercare contract shall include all of the following requirements:
- (1) Group therapy, support groups, or, when appropriate, an individual counseling, or a combination of the above;
  - (2) Periodic, random, unannounced blood or urine screens, or both;
  - (3) Mandatory participation in alcoholics anonymous, narcotics anonymous, or a similar twelve-step program, or its equivalent;
  - (4) Abstinence from use of alcohol;
  - (5) Abstinence from use of drugs, except those prescribed, administered or personally furnished by another person so authorized by law who has knowledge of the patient's history and of the disease of addiction, or those administered by another person so authorized by law during a medical emergency;
  - (6) Regular contact with a certified alcoholism counselor, or with a physician qualified by training or experience, or both, to treat chemically dependent persons, who assumes responsibility for monitoring defined aspects of aftercare contract compliance, and who agrees to:
    - (a) Report any noncompliance to the treatment provider; and
    - (b) Report any relapse to the treatment provider and the board;
  - (7) A length of contract specified with a minimum of at least two years and at least one hundred and four weekly aftercare sessions, with missed sessions to be made up;
  - (8) Professional therapy, where indicated, to resolve family and work-related problems;
  - (9) Treatment of any ongoing medical problems to be managed by a physician qualified by training or experience, or both, to provide medical care to chemically dependent persons, provided that where such a physician is
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unavailable due to geographic or other reasonable constraints, treatment shall be managed by a physician in consultation with one so qualified;

(10) Referral to other forms of extended care, when indicated; and

(11) Any required supervision or restrictions of practice during aftercare.

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TO BE RESCINDED

4731-16-11

**Revocation, suspension, or denial of certificate of good standing.**

- (A) The board may refuse to issue or renew, suspend, or revoke a certificate of good standing based upon non-compliance with the provisions of this chapter of the Administrative Code or applicable provisions of Chapter 4731. of the Revised Code.
- (B) If the board proposes to refuse to issue or renew, suspend, or revoke a certificate of good standing, the applicant or the certificate holder shall be entitled to a hearing on the issue of such proposed denial or such proposed revocation or suspension. Notice and hearing requirements will comply with the provisions of Chapter 119. of the Revised Code and any rules adopted by the board.
- (C) In determining the effective date of any suspension or revocation of a certificate, the board shall take into consideration those practitioners currently receiving treatment in the treatment program or by the treatment provider subject to the revocation or suspension.
- (D) If the board refuses to renew, suspends or revokes a certificate of good standing, the treatment provider shall be required to notify those practitioners currently receiving treatment in the treatment program that the certificate of good standing has been suspended or revoked.

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TO BE RESCINDED

4731-16-12

**Out-of-state impairment cases.**

- (A) If the board orders a certificate holder who neither resides nor physically practices in Ohio to submit to an evaluation under division (B)(26) of section 4731.22 of the Revised Code, division (F)(2) of section 4730.25 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code or division (F)(2) of section 4762.13 of the Revised Code, or commences disciplinary proceedings against such a certificate holder based on an alleged violation of any of those divisions, the board may waive any or all applicable provisions of this chapter of the Administrative Code, if it finds that alternative means exist to protect the public. Factors the board may consider in determining whether the public will be adequately protected include, but are not limited to, the following:
- (1) Whether the certificate holder is being monitored by the proper licensing authority in the jurisdiction where the certificate holder resides;
  - (2) Whether the certificate holder has received or is receiving evaluation and treatment from a treatment provider acceptable to the proper licensing authority in the jurisdictions where the certificate holder resides, and whether the treatment provider has agreed to report to the board on the certificate holder's diagnosis and progress in treatment, and to provide the board copies of all reports required to be submitted to the licensing authority in the jurisdiction where the certificate holder resides, if requested by the board;
  - (3) Whether the certificate holder is being monitored by a monitoring or advocacy group acceptable to the proper licensing authority in the jurisdiction where the certificate holder resides;
  - (4) Whether the certificate holder's employer or professional associates are aware of the certificate holder's impairment or alleged impairment.
- (B) Grant of a waiver or waivers pursuant to this rule shall be conditioned on the certificate holder agreeing by a signed notarized statement to notify the board in writing of any intent to practice medicine or reside in Ohio, to submit to an evaluation by an approved treatment provider at the certificate holder's expense at that time if requested by the board, and to refrain from commencing practice in Ohio without prior board approval.
- (C) A certificate holder who neither resides nor practices in Ohio who is diagnosed or treated for chemical abuse or chemical dependency outside Ohio must report that diagnosis or treatment in renewing his or her certificate. A certificate holder who neither resides nor practices in Ohio who relapses must report that relapse immediately, as required by rule 4731-15-01 of the Administrative Code.



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(D) If a certificate holder self-reports diagnosis or treatment as required by paragraph (C) of this rule, the board may forgo disciplinary action if it determines that the certificate holder:

- (1) Has not been subject to discipline in any other jurisdiction;
- (2) Is receiving or has completed treatment with a treatment provider acceptable to the medical licensing authority of the jurisdiction in which he or she resides;
- (3) Has not relapsed;
- (4) Is participating in or has successfully completed participation in a monitoring program or diversion program acceptable to the medical licensing authority of the jurisdiction in which he or she resides.

(E) A certificate holder who neither resides nor practices in Ohio who relocates to Ohio after being diagnosed or treated for chemical abuse or chemical dependency must submit to an evaluation by a treatment provider approved under section 4731.25 of the Revised Code and this chapter of the Administrative Code.

- (1) If the certificate holder has less than one year documented sobriety at the time of relocation to Ohio, he or she must submit to an evaluation that meets all the requirements of rule 4731-16-05 of the Administrative Code, and must complete two years of aftercare and the applicable treatment as required by paragraph (B)(3) of rule 4731-16-02 of the Administrative Code.
- (2) If the certificate holder has more than one year but less than five years documented sobriety at the time of relocation to Ohio, he or she must submit to an evaluation that the treatment provider determines to be clinically appropriate, and must obtain the treatment recommended by the treatment provider.

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TO BE RESCINDED

4731-16-13

**Duty to report or refer practitioner, execution of release forms.**

- (A) Licensees, associations, and societies shall report to the board a belief that a licensee suffers from impairment according to rule 4731-15-01 of the Administrative Code. Where the duty to report is relieved pursuant to paragraph (B) of that rule, the following requirements apply:
- (1) In order to ascertain the status of the practitioner's progress, the licensee, member, representative, or agent shall contact the approved treatment provider to ascertain the licensee's progress at least once weekly during the first four weeks following referral, and at least once monthly thereafter, and
  - (2) If at any time the approved treatment provider indicates that the licensee has not continued to participate in accordance with section 4731.25 of the Revised Code, or if the approved treatment provider refuses to release information, the member, representative, or agent shall report to the board all information that led to the belief that the licensee suffers from impairment.
- (B) A licensee who has been referred to an approved treatment provider shall execute, and shall not revoke, appropriate release forms to allow the referring party to monitor his progress in treatment.

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TO BE RESCINDED

4731-16-14

**Caffeine, nicotine, and over-the-counter drugs.**

The provisions of this chapter of the Administrative Code that prohibit use of drugs or substances do not apply to use of caffeinated foods or beverages, to tobacco products containing nicotine, or to the occasional therapeutic use of drugs available over the counter which lack the ability to alter mood or level of consciousness.

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TO BE RESCINDED

4731-16-15

**Patient rights.**

- (A) An approved treatment provider shall deal honestly with its patients and afford them the dignity and respect to which they are entitled as human beings.
- (B) While it is recognized that the high levels of denial and other defenses often displayed by patients in early recovery may necessitate the use of practices which might otherwise be viewed as coercive or heavy handed, an approved treatment provider shall employ such practices solely in the best interest of the patient. Under no circumstances shall such practices be employed to influence a patient to obtain aftercare or other forms of extended care from any particular treatment provider. Such practice may be employed in appropriate cases to influence a patient to obtain needed extended care from any approved treatment provider which has the capability to provide the care indicated.
- (C) An approved treatment provider shall maintain complete and accurate records for the benefit of the patient and the provider of any necessary extended residential treatment, aftercare, or counseling.
- (D) An approved treatment provider shall disclose to the patient in writing all known or reasonably anticipated costs of extended care which it proposes to render, and afford the patient the opportunity to obtain cost comparisons from other approved treatment providers.
- (E) Each patient who falls under the regulatory authority of the state medical board shall be given a written explanation, approved by the board, of the mandatory reporting requirements contained in Chapter 4730., 4731., 4760., or 4762. of the Revised Code.

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TO BE RESCINDED

4731-16-17

**Requirements for one-bite program.**

- (A) “One-bite program” is a confidential program for treatment of impaired practitioners of the medical board established pursuant to section 4731.251 of the Revised Code.
- (B) “Monitoring organization” is an entity which conducts the one-bite program and performs monitoring services for impaired practitioners under a contract with the medical board.
- (C) “One-bite treatment provider” is an entity approved by the board to provide evaluation and treatment to impaired practitioners participating in the one-bite program.
- (D) “Continuing care provider” is an entity approved by the board to provide continuing care to impaired practitioners participating in the one-bite program pursuant to rule 4731-16-21 of the Administrative Code.
- (E) Licensees of the board who may be impaired in the ability to practice in accordance with acceptable and prevailing standards of care and who want to participate in the one-bite program shall complete the following requirements:
  - (1) The licensee shall register with the monitoring organization under contract with the board and obtain a list of the one-bite program treatment providers approved by the board.
  - (2) If the licensee reports directly to an approved treatment provider, the licensee shall register with the monitoring organization upon referral from the approved treatment provider.
  - (3) The treatment provider shall conduct an evaluation in accordance with rule 4731-16-05 of the Administrative Code.
  - (4) The treatment provider shall provide the information regarding the diagnosis and eligibility determination to the monitoring organization for confirmation of eligibility.
  - (5) If the licensee is determined to be impaired and not to be eligible for the one-bite program, the licensee, the monitoring organization and the treatment provider shall report this information to the board.
- (F) Once a licensee is determined to be impaired and eligible for the one-bite program, the licensee shall, within three days, report to an approved treatment provider for treatment. The treatment provider shall develop an individualized treatment plan

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that may include a combination of inpatient, residential, partial hospitalization and/or intensive outpatient treatment.

- (1) The licensee shall be required to immediately suspend practice for a minimum of thirty days. The licensee shall suspend practice until the licensee is determined to be able to practice according to acceptable and prevailing standards by the treatment provider and the medical director of the monitoring organization.
  - (2) The treatment provider shall notify the board and monitoring organization of any licensee who returns to work prior to obtaining the release from the treatment provider and the monitoring organization medical director.
  - (3) The treatment provider shall notify the board and monitoring organization of any licensee who does not successfully complete the prescribed treatment.
- (G) Within one week after successful completion of treatment, the monitoring organization shall ensure that the licensee has entered into an agreement with a board approved continuing care provider.
- (1) The monitoring organization shall confirm that the licensee completes continuing care sessions at least one time per week for at least six months following the release from treatment.
  - (2) The licensee must continue the weekly continuing care meetings until released by the continuing care provider and the medical director of the monitoring organization.
- (H) In order to continue participation in the one-bite program, after successful completion of treatment, the licensee shall enter into an agreement with the monitoring organization for monitoring for at least five years. An individual who chooses not to continue in the one-bite program will be subject to the procedures in rule 4731-16-02 of the Administrative Code.
- (1) The licensee shall be required to provide random, observed toxicology screenings of biological materials, including but not limited to, blood, urine, hair, saliva, breath, or fingernail samples for drugs and alcohol as directed by the monitoring organization with a minimum of two random, observed toxicology screenings per month.
  - (2) The licensee shall attend drug and alcohol support group meetings (e.g.

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alcoholics anonymous or narcotics anonymous) as directed by the monitoring organization with a minimum of attendance at ten meetings per month.

- (3) The licensee shall be released from monitoring by the medical director of the monitoring organization upon successful completion of monitoring.
- (I) Any relapse as defined in paragraph (B) of rule 4731-16-01 of the Administrative Code /shall be reported to the board by the medical director of the monitoring organization and the licensee.
- (J) The board shall develop guidelines in collaboration with the monitoring organization for the reporting of non-compliance with conditions of the one-bite program. Non-compliance shall be reported to the board by the licensee and the medical director of the monitoring organization.

4731-16-17

**Requirements for confidential monitoring program.**

(A) Practitioners and applicants of the board who may be impaired in the ability to practice in accordance with acceptable and prevailing standards of care and who want to participate in the confidential monitoring program shall complete the following requirements:

(1) The practitioner or applicant shall contact the monitoring organization under contract with the board and obtain a list of the approved evaluators and treatment providers;

(2) If the practitioner or applicant reports directly to an approved treatment provider, the practitioner or applicant licensee shall contact the monitoring organization upon referral from the approved evaluator or treatment provider; and

(3) The practitioner or applicant shall participate in an evaluation conducted by an evaluator or treatment provider in accordance with the recommendation of the monitoring organization.

(B) The evaluator or treatment provider shall provide the information regarding the diagnosis and eligibility determination to the monitoring organization for confirmation of eligibility.

(C) If the practitioner or applicant is determined to be impaired and not to be eligible for the confidential monitoring program, the practitioner or applicant and the monitoring organization shall report this information to the board.

(D) Once a practitioner or applicant is determined to be eligible for the confidential monitoring program, the practitioner or applicant shall report to an approved treatment provider for treatment within the timeframe recommended by the monitoring organization. The treatment provider shall develop an individualized treatment plan that may include a combination of inpatient, residential, partial hospitalization, outpatient and/or intensive outpatient treatment.

(1) The practitioner or applicant shall be required to immediately suspend practice if it is recommended by the evaluator or treatment provider or the medical director or designee of the monitoring organization. The practitioner or applicant shall suspend practice until determined to be able to practice according to acceptable and prevailing standards by the evaluator or treatment provider and the medical director or designee of the monitoring organization.

(2) The monitoring organization shall notify the board of any practitioner who returns to work prior to obtaining the release from the treatment provider and the monitoring organization medical director or designee. The board shall proceed in accordance with rule 4731-16-02 of the Administrative Code.

(3) The monitoring organization shall notify the board of any practitioner or



applicant who does not successfully complete the prescribed treatment. The board shall proceed in accordance with rule 4731-16-02 of the Administrative Code.

(4) The monitoring organization shall ensure that the practitioner or applicant has entered into an agreement with an approved continuing care provider if continuing care is recommended by the treatment provider. If continuing care is recommended, the monitoring organization shall confirm that the practitioner or applicant completes continuing care sessions in accordance with the recommendation until released by the continuing care provider and the medical director or designee of the monitoring organization.

(E) In order to continue participation in the confidential monitoring program, after successful completion of any recommended treatment, the practitioner or applicant shall enter into an agreement with the monitoring organization. The agreement may include the following provisions:

(1) Random toxicology testing, if applicable;

(2) Attendance at drug and alcohol support group meetings (e.g., alcoholics anonymous or narcotics anonymous) or other support group, as directed by the monitoring organization, if applicable;

(3) Treatment and therapy plan;

(4) Continuing care participation, if applicable;

(5) Case management;

(6) Duration of monitoring. Relapses and other failure to comply with terms of the agreement may result in a longer period of monitoring;

(7) Releases for information or records related to the practitioner's impairment, including but not limited to family, peers, health care personnel, employers, and treatment providers;

(8) Grounds for dismissal from participation in the confidential monitoring program for failure to comply with program requirements. An individual who chooses not to continue in the confidential monitoring program shall be referred to the board for further investigation or disciplinary action; and

(9) Any required fees associated with participation in the confidential monitoring program, including but not limited to fees for toxicology testing.

(F) The practitioner or applicant shall be released from monitoring by the medical director or designee of the monitoring organization upon successful completion of monitoring.

(G) The board shall develop guidelines in collaboration with the monitoring organization for the reporting of non-compliance with conditions of the confidential monitoring program. Non-compliance shall be reported to the board by the practitioner or applicant and the medical director of the monitoring organization.

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TO BE RESCINDED

4731-16-18

**Eligibility for one-bite program.**

- (A) An individual who holds a license issued by the board to practice as a physician, massage therapist, cosmetic therapist, physician assistant, anesthesiologist assistant, radiology assistant, acupuncturist, oriental medicine practitioner, genetic counselor, dietitian, or respiratory care therapist shall be eligible for the one-bite program if all the following requirements are met:
- (1) The licensee has been diagnosed with substance use disorder and is impaired in ability to practice in accordance with acceptable and prevailing standards of care.
  - (2) The licensee has not previously participated in the one-bite program or the reporting exemption under Chapter 4731-15 of the Administrative Code;
  - (3) The licensee has not had any prior disciplinary action for substance use disorder or impairment by a licensing board in Ohio.
- (B) A licensee who fails to complete the program requirements of the one-bite program shall not be eligible for continued participation.
- (C) A licensee who relapses, as that term is defined in rule 4731-16-01 of the Administrative Code, shall not be eligible for continued participation in the one-bite program.
- (D) Participation in the one-bite program does not exempt a licensee from being reported for or subject to discipline under any other violation of the board's statutes and rules.

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TO BE RESCINDED

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**Monitoring organization for one-bite program.**

- (A) The board shall enter into a contract with a monitoring organization to monitor licensees participating in the one-bite program. The monitoring organization shall meet the following criteria:
- (1) The monitoring organization shall meet the requirements of section 4731.251 of the Revised Code.
  - (2) The monitoring organization shall provide licensees with a list of treatment providers approved for the one-bite program for the evaluation pursuant to rule 4731-16-05 of the Administrative Code.
  - (3) The medical director of the monitoring organization shall, along with the medical director of the treatment provider, review and determine whether a licensee is able to practice according to acceptable and prevailing standards of care.
  - (4) The medical director of the monitoring organization shall, along with the continuing care provider, review and determine whether a licensee is eligible for release from continuing care.
  - (5) The monitoring organization shall enter into monitoring agreements with licensees participating in the one-bite program.
  - (6) At the request of the board, the medical director of the monitoring organization, or his or her designee, shall provide testimony in any disciplinary proceeding involving a licensee reported to the board by the monitoring organization
- (B) The agreements between the monitoring organization and licensee shall establish the monitoring terms for at least five years.
- (1) The agreement shall provide that the licensee is required to participate in random observed toxicology screenings of biological materials, including but not limited to blood, urine, hair, saliva, breath, or fingernail samples for drugs or alcohol no less than two times per month.
  - (2) The agreement shall provide that the licensee shall attend drug and alcohol support group meetings (e.g. alcoholics anonymous or narcotics anonymous) as directed by the monitoring organization with a minimum of ten meetings per month.
- (C) The medical director of the monitoring organization shall review each licensee and

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make a determination as to whether the licensee is released from monitoring.

- (D) The monitoring organization shall, within seventy-two hours, report to the board any licensee who fails to comply with the monitoring agreement in accordance with the non-compliance guidelines established by the board and the monitoring organization.
- (E) The monitoring organization shall, within seventy-two hours, report any relapse as defined in paragraph (B) of rule 4731-16-01 of the Administrative Code to the board.
- (F) The monitoring organization shall provide the following reports to the board on a quarterly basis:
  - (1) The number and type of licensees referred to the monitoring organization;
  - (2) The number and type of licensees under agreement with the monitoring organization;
  - (3) The number and type of licensees referred to the board;
  - (4) The number and type of licensees who successfully complete the monitoring agreement.
  - (5) Information regarding the treatment providers, the type of treatment and length of treatment for licensees in the one-bite program;
  - (6) Information regarding source of referrals;
  - (7) Other reports as agreed between the board and the monitoring organization.
- (G) The monitoring organization, in consultation with the board, shall provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program and the board's statutes, rules and policies regarding impairment.
- (H) The monitoring organization shall, within seventy-two hours, report to the board any failure to complete treatment or continuing care.

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**Monitoring organization for confidential monitoring program.**

(A) The board shall enter into a contract with a monitoring organization to monitor applicants and practitioners participating in the confidential monitoring program.

(1) The monitoring organization shall provide practitioners and applicants with a list of treatment providers approved to provide evaluations and treatment for the confidential monitoring program.

(2) The medical director or designee of the monitoring organization shall, along with the medical director of the treatment provider, review and determine whether an individual is able to practice according to acceptable and prevailing standards of care.

(3) The medical director or designee of the monitoring organization shall, along with the continuing care provider, review and determine whether an individual is eligible for release from continuing care, if applicable.

(4) At the request of the board, the medical director of the monitoring organization, or designee, shall provide testimony in any disciplinary proceeding involving a practitioner or applicant reported to the board by the monitoring organization

(B) The agreements between the monitoring organization and practitioner or applicant shall establish the monitoring terms, including the minimum duration and the events which could lead to a longer duration.

(C) The medical director or designee of the monitoring organization shall review each individual and make a determination as to whether the individual is released from monitoring.

(D) The monitoring organization shall, within seventy-two hours, report to the board any of the following:

(1) Any practitioner or applicant referred to the confidential monitoring program who was found to be impaired and ineligible to participate in the program;

(2) Any practitioner or applicant who fails to attend an evaluation recommended by the monitoring organization;

(3) Any practitioner or applicant found to be impaired who fails to enter or complete treatment as recommended by the treatment provider and the monitoring organization;

(4) Any practitioner or applicant found to be impaired who fails to enter or complete continuing care as recommended by the treatment provider and the monitoring organization;

- (5) Any practitioner or applicant found to be impaired who fails to enter into a monitoring agreement as recommended by the monitoring organization;
- (6) Any practitioner or applicant who fails to comply with a monitoring agreement and that failure results in an imminent risk of harm to the public or the practitioner;
- (7) Any practitioner or applicant who presents an imminent danger to the public or the practitioner, as a result of the practitioner's or applicant's impairment; and
- (8) Any practitioner or applicant whose impairment has not been substantially alleviated by participation in the program.
- (E) The monitoring organization shall provide annual and quarterly reports to the board regarding the confidential monitoring program.
- (F) The monitoring organization, in consultation with the board, shall provide education to the practitioners, applicants, evaluators, treatment providers and continuing care providers regarding eligibility criteria for the confidential monitoring program and the boards statutes, rules and policies regarding impairment.
- (G) The monitoring organization shall notify the board of any individual who returns to work prior to obtaining the release from the treatment provider and the monitoring organization medical director or designee.
- (H) The monitoring organization shall notify the board of any individual who does not successfully complete the prescribed treatment.

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TO BE RESCINDED

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**Treatment providers in the one-bite program.**

(A) Criteria for approval of treatment providers for individuals qualifying for the one-bite program shall include all of the following:

- (1) Meet all requirements for treatment providers in rule 4731-16-08 of the Administrative Code.
- (2) Medical director is a board-certified addictionologist or board-certified addiction psychiatrist and is experienced in diagnosing and treating physicians and other health care practitioners with substance use disorders;
  - (a) The medical director shall oversee the initial assessment and diagnosis, ongoing treatment processes, including medications, treatment planning and discharge planning.
  - (b) The medical director shall have knowledge and experience with prescribing medications specifically indicated for use in patients with substance use disorders and with medications to be avoided for patients with substance use disorders.
  - (c) The medical director shall have specific training and knowledge regarding the interpretation of the results of toxicology screening for drugs and alcohol.
- (3) A board-certified psychiatrist is available to evaluate and provide treatment for co-occurring mental health conditions.
- (4) Group therapy is supervised by one of the following master's-level or higher qualified behavioral healthcare providers:
  - (a) Board certified addictionologist, board certified addiction psychiatrist, or psychiatrist licensed under Chapter 4731. of the Revised Code;
  - (b) Licensed independent chemical dependency counselor-clinical supervisor, licensed independent chemical dependency counselor, licensed chemical dependency counselor III, or licensed chemical dependency counselor II licensed under Chapter 4758. of the Revised Code;
  - (c) Professional clinical counselor, licensed professional counselor, licensed independent social worker, licensed social worker, or marriage and family therapist licensed under Chapter 4757. of the Revised Code;



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- (d) Advanced practice registered nurse, licensed as a clinical nurse specialist under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health clinical nurse specialist issued by the American nurses credentialing center;
  - (e) Advanced practice registered nurse, licensed as a nurse practitioner under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health nurse practitioner issued by the American nurses credentialing center;
  - (f) Psychologist, as defined in division (A) of section 4732.01 of the Revised Code, licensed under Chapter 4732. of the Revised Code; or
  - (g) Advanced practice registered nurse licensed under Chapter 4723. of the Revised Code, who holds subspecialty certification as a certified addiction registered nurse-advanced practice issued by the addictions nursing certification board.
- (5) Training regarding the eligibility for the one-bite program shall be provided to all staff on a quarterly basis.
  - (6) Training regarding the board's statutes, rules and policies regarding impairment and reporting violations shall be provided to all staff on a quarterly basis.
  - (7) The treatment provider shall be capable of completing evaluations pursuant to rule 4731-16-05 of the Administrative Code.
  - (8) The treatment provider provides abstinence-based education and treatment for all types of substance use disorders.
  - (9) The treatment provider provides one or more of the following levels of patient care: medical detoxification; inpatient or residential treatment; extended residential treatment; partial hospitalization, intensive outpatient treatment, continuing care or others as necessary.
  - (10) The treatment provider has the ability to provide extended residential care for patients who require continued treatment of substance use disorders.
- (B) The medical director of the treatment provider shall perform an evaluation pursuant to rule 4731-16-05 of the Administrative Code to determine the degree of impairment of the licensee and shall develop an individualized treatment plan. The

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individualized treatment plan may include a combination of in-patient, residential, partial hospitalization and intensive outpatient treatment.

- (1) The treatment provider shall require the licensee to immediately suspend practice upon entering into treatment (upon determination of impairment) and not return to practice for at least thirty days. Clearance from the treatment provider medical director and monitoring organization medical director are required for return to practice.
  - (2) The treatment provider shall notify the monitoring organization of the determination of impairment and the treatment plan.
  - (3) The treatment plan shall include, at least once per week, group therapy with other patients who work in similar disciplines as the licensee or other professionals.
  - (4) The treatment plan shall include education regarding the medical board's statutes, rules and policies with respect to impairment.
  - (5) The treatment plan shall include education and group therapy to assist the patient to transition back to work.
- (C) The treatment provider shall report instances of violations of this chapter to the monitoring organization and the board.
- (D) The treatment provider shall complete and maintain records for each licensee seen for evaluation or treatment under the one-bite program in accordance with paragraph (C) of rule 4731-16-07 of the Administrative Code.
- (E) Each quarter, the treatment provider shall provide to the monitoring organization and the board the following records regarding licensees seen for evaluation or treatment under the one-bite program:
- (1) Number of licensees referred for evaluation (including self-referrals);
  - (2) Number of licensees evaluated;
  - (3) Number of licensees determined to be eligible for one-bite program;
  - (4) Number of referral sources by category (e.g., self-referrals, board referrals,

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medical society referrals, referrals by colleagues);

- (5) Number of licensee evaluations which resulted in treatment recommendations for substance use disorder;
  - (6) Number of licensees treated based on the treatment providers own recommendations;
  - (7) Number of licensees treated based on transfer or referral from other treatment providers;
  - (8) Number of licensees who entered each phase of treatment;
  - (9) Number of licensees engaged in each phase of treatment;
  - (10) Number of licensees who successfully completed each phase of treatment;
  - (11) Number of licensees discharged from each phase of treatment other than upon successful completion, and the rationale for each such discharge;
  - (12) Number of licensee relapses identified during continuing care and following continuing care;
  - (13) Number and names of licensees reported to the board under this chapter of the Administrative Code.
  - (14) Number and identities of referral sources notified of the treatment provider's inability to release information under federal law.
- (F) The reports provided to the board shall not contain identifying information for the licensee participating in the one-bite program.

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Evaluators and treatment providers in the confidential monitoring program.

- (A) The evaluator or treatment provider shall perform an evaluation appropriate to the practitioner or applicant's condition to determine the degree of impairment of the practitioner or applicant and shall develop an individualized treatment plan. The individualized treatment plan may include a combination of in-patient, residential, partial hospitalization, intensive outpatient treatment, outpatient treatment, or other appropriate therapy or treatment appropriate to the practitioner or applicant's condition.
- (B) The evaluator or treatment provider may recommend that the practitioner immediately suspend practice upon determination of impairment. Clearance from the treatment provider and monitoring organization medical director or designee are required for return to practice. Failure of the practitioner or applicant to follow the recommendation shall be reported to the board by the treatment provider and the monitoring organization.
- (C) The evaluator or treatment provider shall notify the monitoring organization of the determination of impairment and the treatment plan.
- (D) The treatment plan shall include group therapy with other patients who work in similar disciplines as the licensee or other professionals, as appropriate.
- (E) The treatment plan shall include education regarding the medical boards statutes, rules, and policies with respect to impairment.
- (F) The treatment plan may include education to assist the patient to transition back to work, if applicable.

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TO BE RESCINDED

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**Continuing care for one-bite program.**

- (A) In order to provide continuing care to a licensee in the one-bite program, a continuing care provider shall enter into a continuing care agreement with the licensee. The agreement term shall be established by the continuing care provider but may not be for less than six months.
- (B) The continuing care provider shall be approved by the board.
- (C) A continuing care provider shall provide therapy led by one of the following master's-level or higher qualified behavioral healthcare providers:
- (1) Board certified addictionologist, board certified addiction psychiatrist, or psychiatrist licensed under Chapter 4731. of the Revised Code;
  - (2) Licensed independent chemical dependency counselor-clinical supervisor, licensed independent chemical dependency counselor, licensed chemical dependency counselor III, or licensed chemical dependency counselor II licensed under Chapter 4758. of the Revised Code;
  - (3) Professional clinical counselor, licensed professional counselor, licensed independent social worker, licensed social worker, or marriage and family therapist licensed under Chapter 4757. of the Revised Code;
  - (4) Advanced practice registered nurse, licensed as a clinical nurse specialist under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health clinical nurse specialist issued by the American nurses credentialing center;
  - (5) Advanced practice registered nurse, licensed as a nurse practitioner under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health nurse practitioner issued by the American nurses credentialing center;
  - (6) Psychologist, as defined in division (A) of section 4732.01 of the Revised Code, licensed under Chapter 4732. of the Revised Code; or
  - (7) Advanced practice registered nurse licensed under Chapter 4723. of the Revised Code, who holds subspecialty certification as a certified addiction registered nurse-advanced practice issued by the addictions nursing certification board.
- (D) Continuing care meetings shall be held at least one time per week, with missed meetings made up.

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- (1) Continuing care meetings shall be at least one hour in duration.
  - (2) The continuing care provider shall provide status reports for each participating licensee to the monitoring organization no less than quarterly.
- (E) The continuing care provider shall report to the monitoring organization no less than quarterly and shall provide the following documentation to the monitoring organization on a quarterly basis:
- (1) The number and type of licensees entering into continuing care agreements;
  - (2) The number and type of licensees released by the continuing care program;
  - (3) The average length of the continuing care agreements; and
  - (4) The number and type of licensees who relapse.
- (F) The continuing care provider shall report a licensee who relapsed to the board and the monitoring organization. The continuing care provider shall report to the board and the monitoring organization if the licensee fails to comply with the terms of the continuing care agreement.
- (G) Release from continuing care must be reviewed and agreed upon by the medical director of the monitoring organization.