

4731-13-37

**Motions for reconsideration.**

- (A) All motions for reconsideration shall be made on the day the order was determined by vote of the board.
- (B) A board member may make a motion for reconsideration, which motion need not be in writing.
- (C) All motions for reconsideration made by the respondent or the state shall be in writing and shall specify the factual or legal error that is the basis for the motion.
- (D) The non-moving party shall be offered the opportunity to respond orally to the motion for reconsideration.
- (E) The board shall consider a motion for reconsideration in two steps.
- (1) The first step is to decide whether to grant or deny reconsideration.
- (2) Based on the decision to grant or deny the motion, the board shall then do one of the following:
- (a) If the decision is to deny reconsideration, no further action is required.
- (b) If the decision is to grant reconsideration, the board must reconsider the case and issue a new order. The new order may be the same as originally issued or different from the original one.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	4730.07, 4731.05, 4760.19, 4762.19, 4774.11
Rule Amplifies:	119.09

4731-15-01

**Licensee reporting requirement; exceptions.**

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

- (1) Subject to paragraph (B) of this rule, any individual licensed under Chapter 4731. of the Revised Code or any association or society of individuals licensed under Chapter 4731. of the Revised Code shall report to the board a belief that a violation of Chapter 4730., Chapter 4731., Chapter 4760. ~~or~~ Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board has occurred.
- (2) Subject to paragraph (B) of this rule, any physician assistant or any association or society of physician assistants shall report to the board a belief that a violation of Chapter 4730. or 4731. of the Revised Code, or any rule of the board has occurred.
- (3) Subject to paragraph (B) of this rule, any anesthesiologist assistant or any association or society of anesthesiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4760. of the Revised Code, or any rule of the board has occurred.
- (4) Subject to paragraph (B) of this rule, any acupuncturist or any association or society of acupuncturists shall report to the board a belief that a violation of Chapter 4731. or 4762. of the Revised Code, or any rule of the board has occurred.
- (5) Subject to paragraph (B) of this rule, any radiologist assistant or any association of radiologist assistants shall report to the board a belief that a violation of Chapter 4731. or 4774. of the Revised Code, or any rule of the board has occurred.

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

- (1) The individual or organization is an approved treatment provider under section 4731.25 of the Revised Code or the individual is an employee, agent or representative of an approved treatment provider, and
  - (a) The practitioner maintains participation in treatment or aftercare in accordance with section 4731.25 of the Revised Code and any rules of the board adopted pursuant to that section; and
  - (b) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760. ~~or~~ Chapter

4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.

- (2) The individual is a member of an impaired practitioner committee, or the equivalent, established by a hospital or its medical staff, or is a representative or agent of a committee or program sponsored by a professional association of individuals licensed under Chapter 4731. of the Revised Code to provide peer assistance to practitioners with substance abuse problems, and
  - (a) The practitioner has been referred for examination to an approved treatment program;
  - (b) The practitioner co-operates with the referral for examination and any determination that he or she should enter treatment; and
  - (c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., ~~or~~ Chapter 4762., or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.
- (3) The individual reasonably believes all of the following:
  - (a) The practitioner has been referred for examination to an approved treatment program;
  - (b) The practitioner co-operates with the referral for examination and any determination that he or she should enter treatment; and

- (c) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., ~~or Chapter 4762., or Chapter 4774.~~ of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.~~
- (4) The individual is a member of a review committee described in section 2305.25 of the Revised Code and the sole source for the belief that a violation has occurred and there has been evidence or other matters produced or presented during the proceedings of such committee.
- (5) The individual is otherwise prohibited from reporting to the board by a superseding state or federal law.
- (6) For purposes of this paragraph any individual licensed under Chapter 4730., Chapter 4731., Chapter 4760., ~~or Chapter 4762., or Chapter 4774.~~ of the Revised Code, or any association or society of individuals so licensed, shall report a practitioner who has, at any time during or following treatment, experienced a relapse, as that term is defined in rule 4731-16-01 of the Administrative Code. The relapsing practitioner shall self-report the relapse.
- (C) For purposes of paragraphs (B)(1)(b), (B)(2)(c), and (B)(3)(c) of this rule, violations of provisions of Chapter 4730., Chapter 4731., Chapter 4760., ~~or Chapter 4762., or Chapter 4774.~~ of the Revised Code, or any rule of the board, other than impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice, need not be reported if all of the following requirements are met, but if any or all of the following conditions are not met, the individual or organization shall report to the board all violations which are believed to have occurred:
- (1) All acts or omissions by the practitioner which would otherwise have constituted violations occurred while the practitioner was impaired; and
- (2) The practitioner has not been criminally convicted based on any such acts or omissions; and

- (3) There is no reason to believe that such acts or omissions might have an adverse impact on other individuals.
- (D) For purposes of section 4730.32 ~~of the Revised Code~~, section 4731.224 ~~of the Revised Code~~, section 4760.16 ~~of the Revised Code~~, section 4762.16 ~~of the Revised Code~~, or section 4774.16 ~~of the Revised Code~~, and this rule, "reason to believe" or "a belief" does not require absolute certainty or complete unquestioning acceptance, but only an opinion that a violation has occurred based upon firsthand knowledge or reliable information.
- (E) Any report required under paragraph (A) of this rule shall be made to the board within forty-eight hours. Reporting of any belief that a violation has occurred to a review committee as described in section 2305.251 of the Revised Code or any entity other than the board does not discharge the duty or obligation to report to the board. In cases where the secretary and supervising member determined that peer review is being conducted by a review committee as described in section 2305.251 of the Revised Code for purposes of denying, determining, changing or modifying the scope of the licensee's clinical privileges, they may defer further investigation by the board while awaiting the outcome of that peer review.
- (F) Any individual licensed ~~under Chapter 4731. of the Revised Code by the board~~ or any association or society of individuals who are licensed under Chapter 4731. of the Revised Code or any physician assistant or society of physician assistants by the board who reports to the board a belief that a violation of Chapter 4731., ~~or Chapter 4730., Chapter 4760., Chapter 4762., or Chapter 4774.~~ of the Revised Code, or any rule of the board has occurred shall be considered to be reporting pursuant to the requirements of section 4730.32, 4731.224, 4760.16, 4762.16, or 4774.16 of the Revised Code and shall be immune from civil liability as provided by division (H) of ~~that~~ section 4730.32, division (H) of section 4731.224, division (H) of section 4760.16, division (H) of section 4762.16, or division (H) of section 4774.16 of the Revised Code and paragraph (A) of rule 4731-15-05 of the Administrative Code. ~~In order to invoke immunity, the practitioner who chooses to report anonymously shall request and shall be assigned a confidential identifying number by the board. The practitioner shall be responsible for notifying the board that he or she is a licensee and shall be responsible for maintaining the confidential identifying number in order to verify that he or she has met the reporting obligations of section 4730.32 of the Revised Code or section 4731.224 of the Revised Code and this chapter. The individual, association, or society may remain anonymous by complying with all of the following actions:~~
- (1) The individual, association, or society shall request and shall be assigned a confidential identifying number by the board.
  - (2) The individual, association, or society shall be responsible for notifying the

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

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

- (1) The name of the ~~licensee~~practitioner or other individual in violation;
- (2) The violation which is believed to have occurred; and
- (3) The date(s) of and place(s) of occurrence(s), if known.

Effective:

R.C. 119.032 review dates: 11/16/2009

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 4730.07, 4731.05, 4760.19, 4762.19, 4774.11  
Rule Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25,  
4760.13, 4760.16, 4762.13, 4762.16, 4774.13, 4774.16  
Prior Effective Dates: 9/1/1991, 9/1/1999, 2/28/2004, 6/30/2005

4731-15-02

**Healthcare facility reporting requirement.**

- (A) The chief administrator or executive officer of any healthcare facility as defined in section 3702.51 of the Revised Code, including a hospital, healthcare facility operated by a health insuring corporation, ambulatory surgical facility or similar facility, shall report to the board any formal disciplinary action against any individual licensed under Chapter 4730., 4731., 4760., ~~4762.~~, or 4774. of the Revised Code within sixty days after its completion.
- (B) "Formal disciplinary action" means any procedure resulting in the revocation, restriction, reduction, or termination of clinical privileges for violations of professional ethics, or for reasons of medical incompetence, medical malpractice, or drug or alcohol abuse. Clinical privileges means the authorization by the healthcare facility to a person licensed under Chapter 4730, 4731., 4760., ~~4762.~~, or 4774. of the Revised Code for the provision of health care services.
- (C) Formal disciplinary actions shall include:
- (1) Summary actions, actions that take effect notwithstanding any appeal rights that may exist and actions that result in an individual surrendering clinical privileges while under investigation during proceedings regarding the action being taken or in return for not being investigated or having proceedings held, resulting in revocation, restriction, reduction, or termination of privileges for the violations or reasons set forth in paragraph (B) of this rule; and
  - (2) Actions resulting in refusal or denial of clinical privileges for the violations or reasons set forth in paragraph (B) of this rule;
- (D) Formal disciplinary actions shall not include any action taken for the sole reason of failure to maintain records on a timely basis, failure to pay dues, or failure to attend staff, department or section meetings.
- (E) Formal disciplinary actions need not be reported if:
- (1) The practitioner has been referred for examination to an approved treatment program; and
  - (2) The practitioner cooperates with the referral for examination and any determination that he should enter treatment; and
  - (3) There is no reason to believe that the practitioner has violated any provision of Chapter 4730., Chapter 4731., Chapter 4760., ~~Chapter 4762.~~, or Chapter 4774. of the Revised Code, or any rule of the board, other than impairment of

ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice, as provided in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, or division (B)(6) of section 4774.13 of the Revised Code.

(F) Each report shall include:

- (1) The name and address of the facility reporting;
- (2) The ~~licensee's~~practitioner's name and license number;
- (3) The action taken by the facility;
- (4) The date of the action taken by the facility;
- (5) The effective date of the action taken by the facility; and
- (6) A summary of the underlying facts leading to the action.

(G) ~~Upon receipt and review of a national practitioner data bank report by the board, the board shall contact the reporting facility to verify~~ A facility's timely filing with the board of a copy of the national practitioner data bank adverse action report shall satisfy the reporting requirement of this rule when, upon contact by the board, the reporting facility verifies that the filing of the report has been approved by the peer review committee which reviewed the case or by the governing board of the facility, in accordance with division (A) of section 4731.224 of the Revised Code. ~~Upon verification of the report, the timely filing of a national practitioner data bank adverse action report by the facility with the board shall satisfy the reporting requirement as set forth in paragraphs (A) to (G) of this rule.~~

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

~~Revised Code or section 4762.16 of the Revised Code~~applicable reporting requirements, whichever is applicable, unless the board has granted a prior extension in writing.

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R.C. 119.032 review dates: 11/16/2009

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 4730.07, 4731.05, 4760.19, 4762.19, 4774.11  
Rule Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25,  
4760.13, 4760.16, 4762.13, 4762.16, 4774.13, 4774.16  
Prior Effective Dates: 9/1/01, 2/28/04

4731-15-03

**Malpractice reporting requirement.**

- (A) Any insurer providing professional liability insurance or any other entity that seeks to indemnify the professional liability of any person holding a valid certificate issued pursuant to Chapter 4730., 4731., 4760., ~~or 4762.~~ or 4774. of the Revised Code shall notify the board within thirty days after the final disposition of any written claim for damages where such disposition results in a payment which exceeds twenty-five thousand dollars.
- (B) For purposes of division (D) of section 4730.32 of the Revised Code, division (D) of section 4731.224 of the Revised Code, division (D) of section 4760.16 of the Revised Code, division (D) of section 4762.16 of the Revised Code, division (D) of section 4774.16 of the Revised Code, and this rule:
- (1) The amount of payment shall mean the aggregate gross settlement, not including court costs or other litigation costs;
  - (2) The present value of future payments shall be utilized in calculating the aggregate gross settlement in cases of structured payments;
  - (3) In cases involving multiple defendants where payment exceeds twenty-five thousand dollars but no specific allocation is made in the disposition of the claim, a report shall be filed with the board for each of the defendants upon whose behalf the payment is made;
  - (4) Payments made solely for damages not arising from patient care need not be reported;
  - (5) The waiver of an outstanding debt is not construed as a payment.
- (C) Each notification to the board shall include the following:
- (1) The name and address of the person submitting the notification;
  - (2) The identity of the insurer or other indemnifying entity;
  - (3) The name and address of the insured who is the subject of the claim;
  - (4) The name of the person filing the written claim;
  - (5) The date of final disposition;

(6) The amount of payment;

(7) If applicable, the identity of the court in which the final disposition took place.

(D) ~~The timely filing of a~~An insurer that reports a medical malpractice payment to the national practitioner data bank ~~medical malpractice payment report by the insurer with the board shall~~ may satisfy the reporting requirement as set forth in paragraphs (A) to (D) of this rule by timely filing a copy of the national practitioner data bank medical malpractice report with the board.

(E) The reports received under division (D) of section 4730.32 of the Revised Code, division (D) of section 4731.224 of the Revised Code, division (D) of section 4760.16 of the Revised Code, division (D) of section 4762.16 of the Revised Code, division (D) of section 4774.16 of the Revised Code, and this rule shall be listed for periodic review by the secretary and supervising member at least once every three months. ~~Based upon that~~The review,~~they~~ shall determine the need to investigate possible violations of Chapter 4730., 4731., 4760., ~~or 4762., or 4774.~~ of the Revised Code or any rule of the board.

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Certification

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Date

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Statutory Authority: 4730.07, 4731.05, 4760.19, 4762.19, 4774.11  
Rule Amplifies: 4730.32, 4731.224, 4760.16, 4762.16, 4774.16  
Prior Effective Dates: 9/1/91, 2/28/04

4731-15-04

**Professional society reporting.**

- (A) Any professional association or society composed primarily of doctors of medicine and surgery, doctors of osteopathic medicine and surgery, doctors of podiatric medicine and surgery, practitioners of the limited branches of medicine, anesthesiologist assistants, physician assistants, ~~or~~ acupuncturists, or radiologist assistants that suspends or revokes an individual's membership in that society for violations of professional ethics or for reasons of professional incompetence or professional malpractice shall report that action to the board within sixty days after a final decision.
- (B) Each report shall include:
- (1) The licensee's name and license number;
  - (2) The action taken; and
  - (3) A summary of the underlying facts leading to the action.
- (C) ~~The timely filing of a~~ A professional association or society that reports an adverse action to the national practitioner data bank adverse action report by the society with the board shall satisfy the reporting requirement as set forth in paragraphs (A) and (C)(NPDB) may satisfy the reporting requirement of this rule by timely filing a copy of the NPDB adverse action report with the board.

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Rule Amplifies: 4730.32, 4731.224, 4760.16, 4762.16, 4774.16  
Prior Effective Dates: 9/1/91, 2/28/04

4731-15-05

**Liability; reporting forms; confidentiality and disclosure.**

- (A) Any person, health care facility, association, society, or insurer who reports to the board or who refers an impaired practitioner to an approved treatment program shall not be subject to suit for civil damages as a result of the report, referral, or provision of information.
- (B) The board shall provide, upon request, forms for reporting under the provisions of section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code, and this chapter of the Administrative Code.
- (C) When a national practitioner data bank report form is accepted by the board for the purpose of satisfying the requirements of section 4731.224 of the Revised Code and this chapter of the Administrative Code, the board shall redact the following information prior to disclosing the report as authorized under section 4731.224 of the Revised Code and this chapter of the Administrative Code:
- (1) National practitioner data bank identification number of the reporting entity, and
  - (2) All national practitioner data bank references and federal form indicia.
- (D) ~~All summaries~~ Summaries, reports, and records received and maintained by the board pursuant to section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code and this chapter of the Administrative Code shall be held in confidence and shall not be subject to discovery or introduction in evidence in any federal or state civil action involving a health care professional or facility arising out of matters which are the subject of such reporting to the board. ~~The~~
- (1) ~~The~~ board may only disclose the summaries and reports to hospital committees which are involved in ~~ereditiaing~~ credentialing or ~~reereditiaing~~ recredentialing the ~~ertificate holder~~ practitioner or in reviewing the practitioner's clinical privileges, and in credentialing or recredentialing or reviewing the clinical privileges of the supervising physician of a practitioner licensed pursuant to Chapters 4730., 4760., 4762., or 4774. of the Revised Code. Such disclosure may be made through an independent ~~ereditiaing~~ credentialing service if the service merely communicates the information to the hospital committees and maintains strict confidentiality as provided in a written agreement with the board. ~~Reports filed by an individual licensee pursuant to division (B) of section 4730.32 of the Revised Code, division (B) of section 4731.224 of the Revised Code, division (B) of section 4760.16 of the Revised Code, division (B) of section~~

~~4762.16 of the Revised Code and rule 4731-16-01 of the Administrative Code shall not be disclosed.~~

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

- (E) Except for reports filed by an individual licensee pursuant to division (B) of section 4730.32 of the Revised Code, division (B) of section 4731.224 of the Revised Code, division (B) of section 4760.16 of the Revised Code, division (B) of section 4762.16 of the Revised Code, division (B) of section 4774.16 of the Revised Code and rule 4731-15-01 of the Administrative Code, a copy of any reports or summaries received by the board pursuant to section 4730.32 of the Revised Code, section 4731.224 of the Revised Code, section 4760.16 of the Revised Code, section 4762.16 of the Revised Code, section 4774.16 of the Revised Code and Chapter 4731-15 of the Administrative Code shall be sent to the ~~certificate holder~~ practitioner by the board. The ~~certificate holder~~ practitioner shall have the right to file a statement with the board concerning the correctness or relevance of the information. Such statement, upon receipt by the board, shall at all times accompany that part of the record in contention.
- (F) The board need not accept reports, summaries, or statements that consist of or include proceedings or records of review committees as described in section 2305.25 of the Revised Code. If the board determines that materials submitted are unacceptable, it shall return those materials to the submitting individual or entity, and provide an opportunity for submission of appropriate materials.

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4760.16, 4762.13, 4762.16, 4774.13, 4774.16  
Prior Effective Dates: 9/1/91, 2/28/04

4731-17-01                   **Definitions.**

For purposes of this chapter of the Administrative Code:

(A) "Licensee" means any person holding or practicing pursuant to a certificate issued by the board under Chapter 4730., 4731., 4760., ~~or 4762., or 4774.~~ of the Revised Code.

(B) "Invasive procedure" means ~~any of the following: surgical or procedural entry into tissues, cavities, or organs or repair of major traumatic injuries associated with any of the following: an operating or delivery room, emergency department, or outpatient setting, including physicians' offices; cardiac catheterization and angiographic procedures; a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists. In addition, "Invasive procedure" means any entry into the hair follicle using an electric modality for the purpose of hair removal. "Invasive procedure" also means the practice of acupuncture as defined in section 4762.01 of the Revised Code.~~

(1) Surgical or procedural entry into tissues, cavities, or organs or repair of major traumatic injuries associated with any of the following: an operating or delivery room, emergency department, or outpatient setting, including physicians' offices; cardiac catheterization and angiographic procedures; a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

(2) Any entry into the hair follicle using an electric modality for the purpose of hair removal.

(3) The practice of acupuncture as defined in section 4762.01 of the Revised Code.

(4) The performance of fluoroscopic procedures pursuant to section 4774.08 of the Revised Code.

(C) "FDA" means the United States food and drug administration.

(D) "EPA" means the United States environmental protection agency.

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4774.13  
Prior Effective Dates: 10/1/94, 12/31/97, 2/28/04

4731-17-07

**Violations.**

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- (A) A physician assistant who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(2), (B)(3), (B)(19) and (B)(2221) of section 4730.25 of the Revised Code. ~~An anesthesiologist assistant who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(4) and (B)(19) of section 4760.13 of the Revised Code. An acupuncturist who violates any provisions of this chapter shall be subject to discipline pursuant to divisions (B)(4) and (B)(20) of section 4762.13 of the Revised Code. Any other licensee who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(6), (B)(20) and (B)(29) of section 4731.22 of the Revised Code.~~
- (B) An anesthesiologist assistant who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(2), (B)(3), (B)(4) and (B)(19) of section 4760.13 of the Revised Code.
- (C) An acupuncturist who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(2), (B)(3), (B)(4) and (B)(20) of section 4762.13 of the Revised Code.
- (D) A radiologist assistant who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(2), (B)(3), (B)(4), and (B)(19) of section 4774.13 of the Revised Code.
- (E) Any other licensee who violates any provision of this chapter shall be subject to discipline pursuant to divisions (B)(6), (B)(20) and (B)(29) of section 4731.22 of the Revised Code.

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4774.13  
Prior Effective Dates: 10/1/94, 12/31/97, 2/28/04

4731-19-01           **Definitions.**

As used in this chapter of the Administrative Code:

- (A) "The board" means the state medical board of Ohio.
- (B) "ODH" means the Ohio department of health.
- (C) "HIV" means the human immunodeficiency virus.
- (D) "HBV" means the hepatitis B virus with hepatitis E-antigen positive status.
- (E) "Licensee" means any person holding or practicing pursuant to a certificate issued by the board under Chapter 4730., 4731., 4760., ~~or 4762.~~ or 4774. of the Revised Code.
- (F) "Invasive ~~procedures~~procedure" means any of the following: any
- (1) Any surgical or procedural entry into tissues, cavities, or organs or repair of major traumatic injuries associated with any of the following: an operating or delivery room, emergency department, or outpatient setting, including physicians' offices; cardiac catheterization and angiographic procedures; a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or the manipulation, cutting, or removal of any oral or premolar tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists. ~~In addition, "Invasive procedure" means any entry into the hair follicle using an electric modality for the purpose of hair removal. "Invasive procedure" also means the practice of acupuncture as defined in section 4762.01 of the Revised Code.~~
  - (2) Any entry into the hair follicle using an electric modality for the purpose of hair removal;
  - (3) The practice of acupuncture as defined in section 4762.01 of the Revised Code;  
or
  - (4) The performance of fluoroscopic procedures pursuant to section 4774.08 of the Revised Code.
- (G) "Exposure-prone invasive procedures" means an invasive procedure in which there is a significant risk of contact between the blood or body fluids of the licensee and the blood or body fluids of the patient. ~~Some~~
- (1) Some characteristics of exposure prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the

licensee's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site. ~~An invasive procedure is exposure prone if it presents a recognized risk of percutaneous injury to the licensee, and, in the event such an injury occurs, the licensee's blood is likely to contact the patient's body cavity, subcutaneous tissues or mucous membranes.~~

(2) An invasive procedure is exposure prone if it presents a recognized risk of percutaneous injury to the licensee, and, in the event such an injury occurs, the licensee's blood is likely to contact the patient's body cavity, subcutaneous tissues or mucous membranes.

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4762.13, 4774.13  
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4731-19-05

**Duty to refrain from certain procedures.**

- (A) A licensee who knows he or she is infected with HIV or HBV shall not perform or participate in an exposure-prone invasive procedure, as that term is defined in paragraph (G) of rule 4731-19-01 of the Administrative Code, until the infected licensee has obtained counsel from the ODH review panel or from an institutional review panel approved by ODH and then, only under the circumstances that the counseling panel decides are appropriate. Such circumstances shall include notifying prospective patients of the licensee's seropositivity before they undergo any exposure-prone invasive procedures identified as such by the infected licensee's ODH review panel or institutional review panel approved by the ODH, and adherence to all guidelines published by the centers for disease control, and the United States department of health and human services.
- (B) A licensee who has reason to suspect that he or she may be infected with HIV or HBV shall obtain appropriate testing to reveal the licensee's HIV status and HBV status before the licensee performs or participates in an exposure-prone invasive procedure.
- (C) A licensee who knows or should suspect that he or she is infected with HIV or HBV shall practice recommended surgical technique and shall adhere to universal precautions, as delineated in Chapter 4731-17 of the Administrative Code, when performing invasive procedures other than exposure-prone invasive procedures.
- (D) A violation of any provision of this rule shall also constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25, division (B)(6) of section 4731.22, division (B)(4) of section 4760.13, ~~and~~ division (A)(4) of section 4762.13, and division (B)(4) of section 4774.13 of the Revised Code.

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4731-19-06

**Board procedures.**

The following procedures shall be followed if the board receives information suggesting that a licensee is infected with HIV or HBV:

- (A) The board shall record a complaint and investigate to determine whether the licensee is infected with HIV or HBV; whether the licensee is likely to perform or participate in an invasive procedure; and whether there is evidence that the licensee has violated any provision of section 4730.25, 4731.22, 4760.13, ~~or 4762.13, or 4774.13~~ of the Revised Code.
- (B) If investigation confirms that the licensee is one who performs invasive procedures and is infected with HIV or HBV but produces insufficient evidence which would support formal discipline based on violations of section 4730.25, 4731.22, 4760.13, ~~or 4762.13, or 4774.13~~ of the Revised Code or any rule of the board, the board will refer the licensee to ODH for evaluation and monitoring as provided in paragraph (B) of rule 4731-19-02 of the Administrative Code. ~~¶~~
- (1) If the licensee who performs invasive procedures fails to verify to the board his or her compliance with the requirements of the monitoring program established by the ODH review panel or institutional review panel approved by ODH, the board will enter the licensee into its confidential monitoring program as provided in rule 4731-19-07 of the Administrative Code. ~~The board will refrain from initiating disciplinary proceedings so long as the licensee complies with the requirements of the confidential monitoring program and so long as the board does not have evidence which support charges of violations of section 4730.25, 4731.22, 4760.13 or 4762.13 of the Revised Code.~~
- (2) The board will refrain from initiating disciplinary proceedings so long as the licensee complies with the requirements of the confidential monitoring program and so long as the board does not have evidence which support charges of violations of section 4730.25, 4731.22, 4760.13, 4762.13, or 4774.13 of the Revised Code.
- (C) If investigation produces evidence which would support formal discipline and additionally confirms that the licensee is infected with HIV or HBV, the board shall initiate formal disciplinary proceedings based on the alleged violations of law, and may also enter the licensee into the confidential monitoring program. The board will treat all information relating to the licensee's infection with HIV or HBV as confidential, and will divulge the information only to the extent necessary to prove its allegations in the disciplinary proceedings.
- (D) A licensee who has been entered into the confidential monitoring program who fails to comply with the requirements of the program will be subject to discipline for violations of ~~divisions~~ division (B)(20) ~~and (B)(28)~~ of section 4731.22 ~~of the~~

~~Revised Code, and additionally for violations of any other division (B)(3) of section 4730.25, 4731.22, division (B)(3) of section 4760.13, or division (B)(3) of section 4762.13, or division (B)(3) of section 4774.13 of the Revised Code, as the facts may warrant~~ applicable to the licensee.

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4731-26-01

**Definitions.**

For purposes of Chapter 4731-26 of the Administrative Code:

(A) ~~“Licensee” means an individual holding a certificate to practice as a physician assistant under Chapter 4730. of the Revised Code, a certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under Chapter 4731. of the Revised Code, or a certificate of registration as an anesthesiologist assistant under Chapter 4760. of the Revised Code.~~ any of the following:

(1) An individual holding a certificate to practice as a physician assistant under Chapter 4730. of the Revised Code;

(2) An individual holding a certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under Chapter 4731. of the Revised Code;

(3) An individual holding a certificate to practice a limited branch of medicine under Chapter 4731. of the Revised Code;

(4) An individual holding a certificate of registration as an anesthesiologist assistant under Chapter 4760. of the Revised Code;

(5) An individual holding a certificate to practice as an acupuncturist under Chapter 4762. of the Revised Code; or

(6) An individual holding a certificate to practice as a radiologist assistant under Chapter 4774. of the Revised Code.

(B) "Examination, health care, treatment, or other services" means examination, health care, treatment, or other services provided by a licensee under the legal authority conferred by a current license, certificate, or registration issued by the board.

~~(B)~~(C) “Patient” means a person for whom the licensee has provided services to address medical needs. examination, health care, treatment, or other services, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order. Once a licensee-patient relationship is established, a person remains a patient until the relationship is terminated. Patient includes any of the following:

(1) A person who is receiving health care or treatment from the licensee or has received health care or treatment examination, health care, treatment, or other services from the licensee without the termination of the physician licensee-patient relationship pursuant to rule 4731-27-01 of the Administrative Code; or

(2) A person who meets the criteria of a key third party, as that term is defined in paragraph ~~(C)~~(D) of this rule.

~~(C)~~(D) “Key third party” means an individual closely involved in the patient’s ~~medical decision-making and care~~regarding examination, health care, treatment, or other services, including but not limited to, the patient’s spouse or partner, parents, child, sibling, or guardian. For purposes of this chapter, an individual’s status as a key third party ceases upon the termination of the ~~physician~~licensee-patient relationship or upon termination of the individual’s relationship with the patient.

~~(D)~~(E) “Chaperone” means a third person who, with the patient’s consent, is present during a medical examination.

~~(E)~~(F) “Former patient” means one of the following:

(1) A person for whom the licensee has not rendered ~~medical service~~examination, health care, treatment, or other services since the ~~physician~~licensee-patient relationship was terminated ~~in accordance with rule 4731-27-01 of the Administrative Code~~; or

(2) A person who has otherwise been admitted, discharged, or referred to another ~~physician~~licensee for care ~~following~~subsequent to receipt of ~~services~~examination, health care, treatment, or other services by a licensee in an emergency setting or on an episodic basis, and such action has been recorded in the person's medical record or chart.

~~(F)~~(G) “Intimate examination” means an examination of the pelvic area, genitals, rectum, or, if the person is a female, a breast, or, if the person is a male, the prostate.

~~(G)~~(H) “Sexual misconduct” means behavior that exploits the ~~physician~~licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes ~~the following~~sexual impropriety, sexual contact, or sexual interaction as follows:

(1) “Sexual impropriety” ~~by the licensee, such as~~means behaviors, gestures, or expressions by the licensee that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:

(a) Neglecting to employ disrobing or draping practices respecting the

~~person's~~patient's privacy;

- (b) Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient's consent or in the event such consent has been withdrawn;
  - (c) Making comments that are not clinically relevant about or to the patient, including but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;
  - (d) Soliciting a date or romantic relationship with a patient;
  - (e) ~~Initiation~~Participation by the licensee ~~of~~in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;
  - (f) Requesting details of the patient's sexual history, sexual problems, sexual preferences, or sexual ~~likes or dislikes~~fantasies when not clinically indicated for the type of examination ~~or consultation, health care, treatment, or other services~~; and
  - (g) Failing to offer the patient the opportunity to have a third person or chaperone in the examining room during an intimate examination and/or failing to provide a third person or chaperone in the examining room during an intimate examination upon the request of the patient.
- (2) "Sexual contact" means behaviors, gestures, or expressions by a licensee, including but not limited to, the following:
- (a) Touching a breast or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate examination, health care, ~~or~~ treatment, or services, or where the patient has refused or has withdrawn consent; and
  - (b) Examining or touching of the patient's genitals without the use of gloves.
- (3) "Sexual ~~conduct~~ interaction" means any behavior, gesture, or expression between a licensee and patient whether or not initiated by, consented to, or participated in by a patient, ~~and any conduct with a patient~~ that is sexual or may be reasonably interpreted as sexual, including but not limited to, the following:

- (a) Sexual intercourse, genital to genital contact;
  - (b) Oral to genital contact;
  - (c) Oral to anal contact, genital to anal contact;
  - (d) Kissing in a romantic or sexual manner;
  - (e) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;
  - (f) Offering to provide ~~practice-related~~ examination, health care, treatment, or services, such as drugs, in exchange for sexual favors; and
  - (g) Performing an intimate examination ~~or consultation~~ without clinical justification.
- (4) ~~Conduct~~ Behaviors, gestures, or expressions described in paragraphs ~~(GH)~~(1)(a), ~~(GH)~~(1)(b), ~~(GH)~~(1)(g), and ~~(GH)~~(2)(b) of this rule does not constitute sexual misconduct when all of the following criteria are met:
- (a) The ~~conduct~~ behaviors, gestures, or expressions occurred during the rendering of ~~medical care~~ examination, health care, treatment, or other services in an emergency setting;
  - (b) The ~~care~~ examination, health care, treatment, or other service rendered was ~~medically~~ clinically necessary; ~~and~~
  - (c) ~~Both of the following conditions are met:~~ The patient was unconscious or otherwise unable to consent to examination, health care, treatment, or other services; and
    - (i) ~~The patient was unconscious or otherwise unable to consent to treatment; and~~
    - (ii) ~~The patient's medical condition required immediate action and the licensee could not comply with the provisions of paragraph (G)(1)(a), (G)(1)(b), (G)(1)(g), or (G)(2)(b) of this rule, as applicable, due to circumstances not within the licensee's control.~~
  - (d) The patient's clinical condition required immediate action and the licensee

could not comply with the provisions of paragraph (H)(1)(a), (H)(1)(b), (H)(1)(g), or (H)(2)(b) of this rule, as applicable, due to circumstances not within the licensee's control.

~~(H)(I)~~ "Emergency setting" means an emergency department ~~or an urgent care center.~~

~~(H)(J)~~ "Board" means the state medical board of Ohio.

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4731-26-02

**Prohibitions.**

Sexual ~~behavior~~ misconduct, as that term is defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, between a licensee and a patient is never diagnostic or therapeutic.

(A) A licensee shall not engage in sexual misconduct with a patient, ~~or~~ key third party, or chaperone as those terms are defined in rule 4731-26-01 of the Administrative Code.

(B) Conduct including behaviors, gestures, or expressions included within the definition of sexual misconduct occurring between a licensee and a former patient constitutes sexual misconduct and is prohibited if it meets any of the following criteria:

(1) The conduct including behaviors, gestures, or expressions occurred within ninety days after the ~~physician~~ licensee-patient relationship was terminated;

(2) The conduct including behaviors, gestures, or expressions occurred between a psychiatrist and a person to whom the ~~physician~~ psychiatrist formerly provided psychiatric or mental health services, in violation of the code of ethics of the American Psychiatric Association; or

(3) The board determines that the ~~conduct~~ behaviors, gestures, or expressions constitute ~~constitutes~~ sexual misconduct upon consideration of the following factors:

(a) The duration of the ~~physician~~ licensee-patient relationship;

(b) The nature of the ~~medical~~ examination, health care, treatment, or other services provided;

(c) The lapse of time since the ~~physician~~ licensee-patient relationship ended;

(d) The extent to which the former patient confided personal or private information to the licensee;

(e) The degree of emotional dependence that the former patient has or had on the licensee; and

(f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous ~~physician~~ licensee-patient relationship.

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4731-26-03

**Violations, miscellaneous.**

- (A) Except as provided in paragraph (C) of this rule, a violation of rule 4731-26-02 of the Administrative Code, as determined by the board, shall constitute the following:
- (1) For a physician or a practitioner of a limited branch of medicine, “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.
  - (2) For a physician assistant, “a departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established, as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.
  - (3) For an anesthesiologist assistant, “a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established,” as that clause is used in division (B)(4) of section 4760.13 of the Revised Code.
  - (4) For an acupuncturist, a "departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established," as that clause is used in division (B)(4) of section 4762.13 of the Revised Code.
  - (5) For a radiologist assistant, a "departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established," as that clause is used in division (B)(4) of section 4774.13 of the Revised Code.
- (B) Where the alleged behavior does not in itself constitute sexual misconduct, as defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, the board may consider expert testimony or other evidence in making its determination as to whether the behaviors, gestures, or expressions of the licensee constitute sexual misconduct.
- (C) Nothing in this rule shall limit the board’s authority to investigate and take action under ~~section~~sections 4730.25, 4731.22, ~~or~~ 4760.13, 4762.13, or 4774.13 of the Revised Code.

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4731-28-01

**Mental or physical impairment.**

For the purposes of division (B)(4) of section 4730.25 of the Revised Code, division (B)(19) of section 4731.22 of the Revised Code, division (B)(5) of section 4760.13 of the Revised Code, ~~and~~ division (B)(5) of section 4762.13 of the Revised Code, and division (B)(5) of section 4774.13 of the Revised Code, the following definitions apply:

(A) "Mental illness" includes, but is not limited to, mental disorder; and

(B) "Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills", includes inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision.

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