State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Interpretive Guideline: Ohio Administrative Code Rule 4731-11-09, Prescribing to persons not seen by the physician, based on certain technological advances

The following interpretation of Rule 4731-11-09 and the requirement to personally physically examine and diagnose a patient applies solely to cases that involve prescribing or personally furnishing non-controlled substances.

The State Medical Board of Ohio has in recent months received numerous inquiries concerning the requirement to "personally physically examine and diagnose a patient" prior to prescribing, as set forth in Ohio Administrative Code Rule 4731-11-09. The inquiries raise questions regarding the ability to use the internet or other forms of telecommunication to complete the physical examination of a patient that is the basis for a diagnosis and follow through on a plan of treatment for the individual patient.

This document addresses these inquiries and provides guidance to physicians and other authorized prescribers (Advanced Practice Nurse or Physician Assistant). This statement does not address prescribing for controlled substances[1] or the provision of tele-psychiatry as provided in Rule 4731-11-09.

Rule 4731-11-09

Ohio Administrative Code Rule 4731-11-09 generally requires a physician or other authorized prescriber to personally physically examine and diagnose a person prior to initially prescribing, dispensing, otherwise providing or causing to be provided any controlled substance or non-controlled substance. However, exceptions to Rule 4731-11-09 provide for situations where the personal physical examination and diagnoses standards are otherwise likely to have been met including: institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, situations involving advanced practice nurses practicing in accordance with standard care arrangements, and hospice settings[2].

Rule 4731-11-09 promotes the importance of the physician-patient relationship and the need to conform to minimal standards of care, especially in cases where prescribing of dangerous drugs is deemed necessary. The rule was initially adopted in response to a growing trend of physicians

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[1] Section 309 of the Controlled Substances Act (21 U.S.C. 829) sets forth certain requirements when prescribing controlled substances which require an in-person medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

[2] Rule 4731-11-09(B), Ohio Administrative Code provides an additional exception for a physician who is prescribing non-controlled substances to a patient in consultation with another physician who has an ongoing professional relationship with the patient, and has agreed to supervise the patient's use of the drug or drugs to be provided.

issuing prescriptions for dangerous drugs to persons without the benefit of reliable diagnostic information. These physicians prescribed using abbreviated medical histories, usually obtained via the internet or in a few cases with a phone call to the patient. The physicians failed to conduct physical examinations and the way they practiced did not allow for positive identification of the patients.

At the time of the rule's adoption telemedicine consisted primarily of telephone consults between physicians and electronic transmission of radiographic images and reports. Today, the Board recognizes that with advances in medical technology it may be possible for the "personal" and "physical" examination required by Rule 4731-11-09 to occur when the provider and patient are located in remote locations.

Interpretative Guideline

When personally physically examining a patient who is located at a remote location, the physician or authorized prescriber should obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided and conform to minimal standards of care. Prior to initially prescribing non-controlled substances the physician or authorized prescriber should: (a) establish or have previously established a valid provider patient relationship; (b) have appropriate diagnostic medical equipment capable of transmitting in real-time the patient's vital signs and other physical data; (c) have appropriate diagnostic medical equipment capable of transmitting in real-time images of the patients symptoms and that also has the ability to be adjusted for better image quality and definition; (d) have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s); (e) as appropriate, follow up with the patient to assess the therapeutic outcome; (f) maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or her other health care professionals; and (g) include the electronic prescription information as part of the patient medical record.

The standards outlined in this document are based in part on those established by the American Medical Association guidance document H-120.949 "Guidance for Physicians on Internet Prescribing."

This statement should not be construed as new law; rather it is an attempt to clarify existing regulations. Such clarification is intended for the benefit of practitioners and the public as a way to promote better understanding of the laws governing the practice of medicine.

Adopted: September 13, 2012