

**MEDICAL BOARD  
NOTICE OF PUBLIC HEARING**

The **State Medical Board of Ohio**, pursuant to Chapter 119, Ohio Revised Code, hereby gives notice that it will conduct a public hearing to consider the adoption of rules.

The public hearing will be conducted on **Monday, May 17, 2021 at 1:30 via GoToWebinar**. **See below for registration information.** Oral or written testimony may be presented by any person affected by the proposed actions.

**The following rules are proposed:**

Light Based Medical Devices Rules

4731-18-01	Definitions	Proposed New Rule
4731-18-02	Use of light based medical devices	Proposed New Rule
4731-18-02	Use of light based medical devices	Proposed to be Rescinded
4731-18-03	Delegation of the use of light based medical devices for specified non-ablative procedures.	Proposed New Rule
4731-18-03	Delegation of the use of light based medical devices for specified non-ablative procedures.	Proposed to be Rescinded
4731-18-04	Delegation of phototherapy and photodynamic therapy	Proposed New Rule
4731-18-04	Delegation of phototherapy and photodynamic therapy	Proposed to be Rescinded

Hearing Rules

4731-13-01	Representatives; Appearances	Proposed to be Amended
4731-13-03	Authority and duties of hearing examiners	Proposed to be Amended
4731-13-06	Continuance of hearing	Proposed to be Amended
4731-13-07	Motions	Proposed to be Amended
4731-13-07.1	Form and page limitations for briefs and memoranda	Proposed to be Amended
4731-13-08	Filing	Proposed to be Amended
4731-13-09	Service	Proposed to be Amended
4731-13-13	Subpoenas for purposes of hearing	Proposed to be Amended
4731-13-15	Reports and recommendations	Proposed to be Amended
4731-13-16	Reinstatement or restoration of certificate	Proposed to be Amended
4731-13-17	Settlements, dismissals, and voluntary surrenders	Proposed to be Amended
4731-13-33	"Physicians' Desk Reference"	Proposed to be Amended
4731-13-36	Disciplinary actions	Proposed to be Amended

Dietetics Rules

4759-4-04	Continuing Education	Proposed New Rule
4759-4-04	Continuing Education	Proposed to be Rescinded
4759-4-08	Limited Permit	Proposed New Rule
4759-4-08	Limited Permit	Proposed to be Rescinded
4759-6-02	Standards of professional performance	Proposed to be Amended

**The proposed rules will be available from:**

- State Medical Board of Ohio, 30 East Broad Street, 3rd Floor, Columbus, OH 43215

Medical Board's website: <http://med.ohio.gov> under the Laws & Rules tab (click on Public Rules Hearings)

- Register of Ohio website: <http://www.registerofohio.state.oh.us/rules/search> (Select "4731 State Medical Board" from the drop-down list.)

**All interested persons will be given the opportunity to be heard at the public hearing.** Those persons who wish to provide oral testimony at the hearing should preregister. (see instructions below) Persons providing oral testimony are encouraged to also submit a copy of the testimony to Judy Rodriguez at the email address below.

All written comments received by the Board before the close of the hearing record will be considered. **Written comments may be provided at the public hearing.** However, persons interested in providing written comments are encouraged to do so prior to May 17, 2021.

- via e-mail to: [Kimberly.Anderson@med.ohio.gov](mailto:Kimberly.Anderson@med.ohio.gov)
- via mail to: **Kimberly Anderson, Chief Legal Counsel  
State Medical Board of Ohio  
30 East Broad Street, 3rd Floor  
Columbus, OH 43215-6127**

### **Registration Instructions**

All interested parties may register for the hearing at  
<https://attendee.gotowebinar.com/register/3723675761974385421>

Once registered, parties will receive an email with a link that will connect them to the hearing.

4731-18-01

Definitions.

As used in this chapter of the Administrative Code:

(A) “Light based medical device ” means any device that can be made to produce or amplify electromagnetic radiation at wavelengths equal to or greater than one hundred eighty nm but less than or equal to  $1.0 \times 10^6$  nm [ten to the sixth power] and that is manufactured, designed, intended or promoted for irradiation of any part of the human body for the purpose of affecting the structure or function of the body.

(B) “Phototherapy” means the following:

(1) For paragraph (A) of rule 4731-18-04 of the Administrative Code, phototherapy means the application of light for the treatment of hyperbilirubinemia in neonates.

(2) For paragraphs (B) and (C) of rule 4731-18-04 of the Administrative Code, phototherapy means the application of ultraviolet light for the treatment of psoriasis and similar skin diseases. This application can occur with any device cleared or approved by the United States food and drug administration for the indicated use that can be made to produce irradiation with broadband ultraviolet B (290-320nm), narrowband ultraviolet B (311-313 nm), excimer light based (308nm), ultraviolet A1 (340-400nm), or UVA (320-400nm) plus oral psoralen called PUVA.

(C) “Photodynamic therapy” means light therapy involving the activation of a photosensitizer by visible light in the presence of oxygen, resulting in the creation of reactive oxygen species, which selectively destroy the target tissue.

(D) “Ablative dermatologic procedure” means a dermatologic procedure that is expected to excise, burn, or vaporize the skin below the dermo-epidermal junction.

(E) “Non-ablative dermatologic procedure” means a dermatologic procedure that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin.

(F) “Physician means a person authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under Chapter 4731, and acting within the scope of their practice.

(G) “Delegation” means the assignment of the performance of a service to a person who is not a physician.

(H) “On-site supervision” means the physical presence of the supervising physician is required in the same location (i.e., the physician's office suite) as the delegate of the light based medical device but does not require the physician’s presence in the same room.

(I) “Off-site supervision” means that the supervising physician shall be continuously available for direct communication with the cosmetic therapist and must be in a location that under normal conditions is not more than sixty minutes travel time from the cosmetic therapist's location.

(J) “Vascular laser” means light-based medical devices including lasers and intense pulsed light apparatuses whose primary cutaneous target structures are telangiectasia, venulectasia, and superficial cutaneous vascular structures. In general, these lasers have wavelengths that correspond to the hemoglobin absorption spectrum.

4731-18-02

Use of light based medical devices.

- (A) The application of light based medical devices to the human body is the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.
- (B) A physician shall not delegate the application of light based medical devices for ablative procedures.
- (C) A physician may delegate the application of a vascular laser for non-ablative dermatologic procedures according to the requirements in paragraph (A) of rule 4731-18-03 of the Administrative Code.
- (D) A physician may delegate the application of light based medical devices for the purpose of hair removal according to the respective requirements in paragraphs (B) and (C) of rule 4731-18-03 of the Administrative Code.
- (E) A physician may delegate the application of phototherapy for the treatment of hyperbilirubinemia in neonates according to the requirements in paragraph (A) of rule 4731-18-04 of the Administrative Code.
- (F) A physician may delegate the application of phototherapy and photodynamic therapy only for dermatologic purposes according to the requirements of paragraphs (B) and (C) of rule 4731-18-04 of the Administrative Code.
- (G) A violation of paragraph (B) of this rule shall 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)(6) of section 4731.22 of the Revised Code and "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in division (B)(20) of section 4731.22 of the Revised Code, to wit: section 4731.41 of the Revised Code.

4731-18-02

**Use of light based medical devices.**

- (A) For purposes of this rule, light based medical device shall mean any device that can be made to produce or amplify electromagnetic radiation at wavelengths equal to or greater than one hundred eighty nm but less than or equal to  $1.0 \times 10^6$  nm and that is manufactured, designed, intended or promoted for in vivo irradiation of any part of the human body for the purpose of affecting the structure or function of the body.
- (B) The application of light based medical devices to the human body is the practice of medicine and surgery, osteopathic medicine and surgery and podiatric medicine and surgery.
- (C) Except as provided in rule 4731-18-03 and rule 4731-18-04 of the Administrative Code, no physician licensed pursuant to Chapter 4731. of the Revised Code shall delegate the application of light based medical devices to the human body to any person not authorized to practice medicine and surgery, osteopathic medicine and surgery or podiatric medicine and surgery pursuant to Chapter 4731. of the Revised Code.
- (D) A violation of paragraph (C) of this rule shall 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)(6) of section 4731.22 of the Revised Code and "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in division (B)(20) of section 4731.22 of the Revised Code, to wit: section 4731.41 of the Revised Code.

4731-18-03

Delegation of the use of light based medical devices for specified non-ablative procedures.

(A) A physician may delegate the application of a vascular laser for non-ablative dermatologic procedures only if all the following conditions are met:

(1) The vascular laser has been specifically cleared or approved by the United States food and drug administration for the specific intended non-ablative dermatologic procedure;

(2) The use of the vascular laser for the specific non-ablative dermatologic use is within the physician's normal course of practice and expertise;

(3) The physician has seen and evaluated the patient to determine whether the proposed application of the specific vascular laser is appropriate;

(4) The physician has seen and evaluated the patient following the initial application of the specific vascular laser, but prior to any continuation of treatment in order to determine that the patient responded well to the initial application of the specific vascular laser;

(5) The person to whom the delegation is made is one of the following:

(a) A physician assistant licensed under Chapter 4730. of the Revised Code with whom the physician has an effective supervision agreement authorizing the service; or,

(b) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(6) For a physician assistant, the authorization must meet the requirements of Chapter 4730.21 of the Revised Code.

(7) For a registered nurse or licensed practical nurse, the physician must ensure that the person to whom the delegation is made has received adequate education and training to provide the level of skill and care required including:

(a) Eight (8) hours of basic education that must include the following topics: light based procedure physics, tissue interaction in light based procedures, light based procedure safety including use of proper safety equipment, clinical application of light based procedures, pre and post-operative care of light based procedure patients, and reporting of adverse events;

(b) Observation of fifteen (15) procedures for each specific type of vascular laser non-ablative procedure delegated. The procedures observed must be performed by 5 a physician for whom the use of this specific vascular laser procedure is within the physician's normal course of

practice and expertise; and

(c) Performance of twenty (20) procedures under the direct physical oversight of the physician on each specific type of vascular laser non-ablative procedure delegated. The physician overseeing the performance of these procedures must use this specific vascular laser procedure within the physician's normal course of practice and expertise;

(d) Satisfactory completion of training shall be documented and retained by each physician delegating and the delegate. The education requirement in (a) must only be completed once by the delegate regardless of the number of types of specific vascular laser procedures delegated and the number of delegating physicians. The training requirements in (b) and (c) must be completed by the delegate once for each specific type of vascular laser procedure delegated regardless of the number of delegating physician;

(8) For delegation to a registered nurse or licensed practical nurse, the physician provides on-site supervision at all times that the person to whom the delegation is made is applying the vascular laser; and,

(9) For delegation to a registered nurse or licensed practical nurse, the physician supervises no more than two persons pursuant to this rule at the same time.

(B) A physician may delegate the application of light based medical devices for the purpose of hair removal only if all the following conditions are met:

(1) The light based medical device has been specifically cleared or approved by the United States food and drug administration for the removal of hair from the human body;

(2) The use of the light based medical device for the purpose of hair removal is within the physician's normal course of practice and expertise;

(3) The physician has seen and evaluated the patient to determine whether the proposed application of the specific light based medical device is appropriate;

(4) The physician has seen and evaluated the patient following the initial application of the specific light based medical device, but prior to any continuation of treatment in order to determine that the patient responded well to that initial application of the specific light based medical device;

(5) The person to whom the delegation is made is one of the following:

(a) A physician assistant licensed under Chapter 4730. of the Revised Code with whom the physician has an effective supervision agreement authorizing the service;



- (b) A cosmetic therapist who was licensed under Chapter 4731. of the Revised Code on April 11, 2021 or who has completed a cosmetic therapy course of instruction for a minimum of 750 clock hours and received a passing score on the Certified Laser Hair Removal Professional ® Examination administered by “The Society for Clinical and Medical Hair Removal”; or,
- (c) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code.
- (6) For a physician assistant, the authorization must meet the requirements of Chapter 4730.21 of the Revised Code.
- (7) For cosmetic therapists, registered nurses and licensed practical nurses, the physician shall ensure the person to whom the delegation is made has received adequate education and training to provide the level of skill and care required including:

  - (a) Eight (8) hours of basic education that must include the following topics: light based procedure physics, tissue interaction in light based procedures, light based procedure safety including use of proper safety equipment, clinical application of light based procedures, pre and post-operative care of light based procedure patients, and reporting of adverse events;
  - (b) Observation of fifteen (15) procedures for each specific type of light based medical device procedure for hair removal delegated. The procedures observed must be performed by a physician for whom the use of this specific light based medical device procedure for hair removal is within the physician’s normal course of practice and expertise; and
  - (c) Performance of twenty (20) procedures under the direct physical oversight of the physician on each specific type of light based medical device procedure for hair removal delegated. The physician overseeing the performance of these procedures must use this specific light based medical device procedure for hair removal within the physician’s normal course of practice and expertise;
  - (d) Satisfactory completion of training shall be documented and retained by each physician delegating and the delegate. The education requirement in (a) must only be completed once by the delegate regardless of the number of types of specific light based medical device procedures for hair removal delegated and the number of delegating physicians. The training requirements of (b) and (c) must be completed by the delegate once for each specific type of light based medical device procedure for

hair removal delegated regardless of the number of delegating physicians;

(e) Delegates who, prior to the effective date of this rule, have been applying a specific type of light based medical device procedure for hair removal for at least two (2) years through a lawful delegation by a physician, shall be exempted from the education and training requirements of (a), (b), and (c) for that type of procedure provided that they obtain a written certification from one of their current delegating physicians stating that the delegate has received sufficient education and training to competently apply that type of light based medical device procedure. This written certification must be completed no later than sixty (60) days after the effective date of this provision, and a copy of the certification shall be retained by each delegating physician and each delegate.

(8) For cosmetic therapists, registered nurses and licensed practical nurses, the physician provides on-site supervision at all times that the person to whom the delegation is made is applying the light based medical device; and,

(9) For cosmetic therapists, registered nurses and licensed practical nurses, the physician supervises no more than two persons pursuant to this rule at the same time.

(C) Notwithstanding paragraph (B)(8) of this rule, the physician may provide off-site supervision when the light based medical device is applied for the purpose of hair removal to an established patient if the person to whom the delegation is made pursuant to paragraph (B) of this rule is a cosmetic therapist who meets all of the following criteria:

(1) The cosmetic therapist has successfully completed a course in the use of light based medical devices for the purpose of hair removal that has been approved by the delegating physician;

(2) The course consisted of at least fifty hours of training, at least thirty hours of which was clinical experience; and

(3) The cosmetic therapist has worked under the on-site supervision of the physician making the delegation a sufficient period of time that the physician is satisfied that the cosmetic therapist is capable of competently performing the service with off-site supervision.

The cosmetic therapist shall maintain documentation of the successful completion of the required training.

(D) The cosmetic therapist, physician assistant, registered nurse or licensed practical nurse shall immediately report to the supervising physician any clinically

significant side effect following the application of the light based medical device or any failure of the treatment to progress as was expected at the time the delegation was made. The physician shall see and personally evaluate the patient who has experienced the clinically significant side effect or whose treatment is not progressing as expected as soon as practicable.

(E) A violation of paragraph (A), (B), (C), or (D) of this rule by a physician shall 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)(6) of section 4731.22 of the Revised Code.

(F) A violation of division (A)(5) or (B)(5) of this rule shall constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in division (B)(20) of section 4731.22 of the Revised Code, to wit: section 4731.41 of the Revised Code.

(G) A violation of paragraph (C) or (D) of this rule by a cosmetic therapist shall constitute the unauthorized practice of medicine pursuant to section 4731.41 of the Revised Code.

(H) A violation of paragraph (D) of this rule by a physician assistant shall constitute "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 patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.

4731-18-03

**Delegation of the use of light based medical devices.**

- (A) A physician licensed pursuant to Chapter 4731. of the Revised Code may delegate the application of light based medical devices only for the purpose of hair removal and only if all the following conditions are met:
- (1) The light based medical device has been specifically approved by the United States food and drug administration for the removal of hair from the human body; and
  - (2) The use of the light based medical device for the purpose of hair removal is within the physician's normal course of practice and expertise; and
  - (3) The physician has seen and personally evaluated the patient to determine whether the proposed application of a light based medical device is appropriate; and,
  - (4) The physician has seen and personally evaluated the patient following the initial application of a light based medical device, but prior to any continuation of treatment in order to determine that the patient responded well to that initial application; and,
  - (5) The person to whom the delegation is made is one of the following:
    - (a) A physician assistant registered pursuant to Chapter 4730. of the Revised Code and the physician has a board approved supplemental utilization plan allowing such delegation; or,
    - (b) A cosmetic therapist licensed pursuant to Chapter 4731. of the Revised Code; or,
    - (c) A registered nurse or licensed practical nurse licensed pursuant to Chapter 4723. of the Revised Code; and,
  - (6) The person to whom the delegation is made has received adequate education and training to provide the level of skill and care required; and,
  - (7) The physician provides on-site supervision at all times the person to whom the delegation is made is applying the light based medical device; and,
  - (8) The physician supervises no more than two persons pursuant to this rule at the same time.

(B) Notwithstanding paragraph (A)(7) of this rule, the physician may provide off-site supervision when the the light based medical device is applied to an established patient if the person to whom the delegation is made pursuant to paragraph (A) of this rule is a cosmetic therapist licensed pursuant to Chapter 4731. of the Revised Code who meets all of the following criteria:

- (1) The cosmetic therapist has successfully completed a course in the use of light based medical devices for the purpose of hair removal that has been approved by the board; and
- (2) The course consisted of at least fifty hours of training, at least thirty hours of which was clinical experience; and
- (3) The cosmetic therapist has worked under the on-site supervision of the physician making the delegation a sufficient period of time that the physician is satisfied that the cosmetic therapist is capable of competently performing the service with off-site supervision.

The cosmetic therapist shall maintain documentation of the successful completion of the required training.

(C) The cosmetic therapist, physician assistant, registered nurse or licensed practical nurse shall immediately report to the supervising physician any clinically significant side effect following the application of the light based medical device or any failure of the treatment to progress as was expected at the time the delegation was made. The physician shall see and personally evaluate the patient who has experienced the clinically significant side effect or whose treatment is not progressing as expected as soon as practicable.

(D) For purposes of this rule, on-site supervision requires the physical presence of the supervising physician in the same location (i.e., the physician's office suite) as the cosmetic therapist, physician assistant, registered nurse or licensed practical nurse, but does not require his or her presence in the same room.

(E) For purposes of this rule, off-site supervision means that the supervising physician shall be continuously available for direct communication with the cosmetic therapist and must be in a location that under normal conditions is not more than sixty minutes travel time from the cosmetic therapist's location.

(F) A violation of paragraph (A) (B) or (C) of this rule by a physician shall 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)(6) of section 4731.22 of the Revised Code. A violation of division (A)(5) of this rule shall constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in division (B)(20) of section 4731.22 of the Revised Code, to wit: section 4731.41 of the Revised Code.

- (G) A violation of paragraph (C) of this rule by a cosmetic therapist shall 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)(6) of section 4731.22 of the Revised Code. A violation of paragraph (C) of this rule by a physician assistant shall constitute 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 patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.

4731-18-04

**Delegation of phototherapy and photodynamic therapy.**

(A) A physician may delegate to any appropriate person the application of light based medical devices cleared or approved by the United States food and drug administration for phototherapy in treatment of hyperbilirubinemia in neonates only if all the following conditions are met:

(1) The use of the light based medical device for this treatment is within the physician's normal course of practice and expertise.

(2) The delegation and application of light based medical devices for phototherapy for this treatment is performed pursuant to hospital rules, regulations, policies, and protocols.

(B) A physician may delegate the application of a light based medical device that is a phototherapy device that is cleared or approved by the United States food and drug administration for treatment of psoriasis and similar skin diseases only if all the following conditions are met:

(1) The use of the light based medical device for this treatment is within the physician's normal course of practice and expertise.

(2) The person to whom the delegation is made is one of the following:

(a) A physician assistant licensed under Chapter 4730. of the Revised Code with whom the physician has an effective supervision agreement authorizing the service;

(b) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code; or

(c) A certified medical assistant who has successfully completed and documented the completion of basic training on psoriasis and similar skin diseases and clinical training in the administration of the phototherapy device for the specific skin disease being treated; and

(3) For physician assistants, the authorization shall meet the requirements of Section 4730.21 of the Revised Code;

(4) For registered nurses, licensed practical nurses, and certified medical assistants, the physician has seen and evaluated the patient to determine whether the proposed application of phototherapy is appropriate

(5) For registered nurses, licensed practical nurses, and certified medical assistants, the physician provides on-site supervision at all times that the person to whom the delegation is made is applying the phototherapy.

(C) A physician may delegate the application of light based medical devices cleared or

approved by the United States food and drug administration for photodynamic therapy for dermatologic purposes only if all the following conditions are met:

(1) The use of the light based medical device for this treatment is within the physician's normal course of practice and expertise.

(2) The person to whom the delegation is made is one of the following:

(a) A physician assistant licensed under Chapter 4730. of the Revised Code with whom the physician has an effective supervision agreement authorizing the service; or,

(b) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(3) For physician assistants, the authorization shall meet the requirements of Section 4730.21 of the Revised Code;

(4) For registered nurses and licensed practical nurses, the physician has seen and evaluated the patient to determine whether the proposed application of photodynamic therapy is appropriate;

(5) For registered nurses and licensed practical nurses the person to whom the delegation is made completes basic training on photodynamic therapy and clinical training in the administration of photodynamic therapy for the specific disease or disorder being treated and the completion of this training is documented by the person to whom the delegation is made; and

(6) For registered nurses and licensed practical nurses, the physician provides on-site supervision at all times that the person to whom the delegation is made is applying the photodynamic therapy.

(D) Any person to whom a lawful delegation of phototherapy or photodynamic therapy has been made shall immediately report to the supervising physician any clinically significant side effect following the application of the phototherapy or photodynamic therapy device or any failure of the treatment to progress as was expected at the time the delegation was made. The physician shall see and personally evaluate the patient who has experienced the clinically significant side effect or whose treatment is not progressing as expected as soon as practicable.

(E) A violation of paragraph (A), (B), (C), or (D) of this rule by a physician shall 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)(6) of section 4731.22 of the Revised Code. A violation of division (A)(2), (B)(2), or (C)(2) of this rule shall constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any



provisions of this chapter or any rule promulgated by the board," as that clause is used in division (B)(20) of section 4731.22 of the Revised Code, to wit: section 4731.41 of the Revised Code.

(F) A violation of paragraph (D) of this rule by a physician assistant shall constitute "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 patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.

\*\*\* DRAFT - NOT YET FILED \*\*\*

4731-18-04

**Delegation of the use of light based medical devices;  
Exceptions.**

- (A) A physician authorized pursuant to Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery may delegate to any appropriate person the application of light based medical devices approved by the United States food and drug administration for phototherapy in treatment of hyperbilirubinemia in neonates.
  
- (B) A physician authorized pursuant to Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery may delegate to any appropriate person the application of a light based medical device that is a fluorescent lamp phototherapy device for treatment of psoriasis and similar skin diseases. A fluorescent lamp phototherapy device is a device that emits ultraviolet light through the use of one or more fluorescent bulbs and is approved by the United States food and drug administration for phototherapy in the treatment of psoriasis or similar skin diseases.

4731-13-01

**Representatives; appearances.**

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

- (1) "Respondent" means a person who is requesting or has requested a hearing as provided in Chapter 119. of the Revised Code.
- (2) "Representative of record" means one person designated by each party to be the party's agent for purposes of receipt of service pursuant to this chapter of the Administrative Code.
- (3) "Hearing" means the adjudication hearing held pursuant to Chapter 119. of the Revised Code when a hearing is requested by an applicant or licensee for whom the Board has proposed formal action under section 4730.25, 4731.22, [4759.07](#), 4760.13, [4761.09](#), 4762.13, 4774.13, or 4778.14 of the Revised Code.
- (4) "Summary Suspension" means the pre-hearing suspension of the license under division (G) of section 4730.25, 4731.22, [4759.07](#), 4760.13, [4761.09](#), 4762.13, 4774.13, or 4778.14 of the Revised Code.

(B) The respondent may represent himself or herself or may be represented by an attorney or attorneys who shall be admitted to the practice of law in Ohio. Each attorney representing the respondent shall enter his or her appearance in writing. The respondent may authorize his or her attorney or attorneys to represent the respondent in all facets of a hearing before the board.

(C) If the respondent is self represented, he or she shall be deemed the representative of record for purposes of service pursuant to this chapter of the Administrative Code. If the respondent is represented by one attorney, that attorney shall be deemed the representative of record for purposes of service pursuant to this chapter of the Administrative Code. If the respondent is represented by more than one attorney, the respondent shall designate one of those attorneys as the representative of record for purposes of service pursuant to this chapter of the Administrative Code.

(D) Each representative from the office of the attorney general shall enter his or her appearance in writing. The office of the attorney general shall identify one attorney from that office as the representative of record for purposes of service pursuant to this chapter of the Administrative Code.

(E) The respondent shall not be required to appear personally at any hearing provided he or she has not been subpoenaed. If a respondent has not been subpoenaed to appear at hearing, a respondent may present his or her position, arguments or contentions

in writing.

- (F) An attorney who has filed notice of appearance with the board shall withdraw his or her representation of a respondent by filing a written notice of withdrawal with the board. A written notice of withdrawal should include (i) current address and telephone number of respondent, and (ii) an attestation from the attorney that the respondent has been provided copies of all filings and has been specifically notified of all dates and deadlines.
- (G) An attorney who has been designated as a respondent's representative of record for purposes of service pursuant to this chapter of the Administrative Code shall remain the representative of record for that party until a representative of that party files a written notice designating another attorney or the respondent as the representative of record.
- (H) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board or its hearing examiner shall be sent to the representative of record for each party.

4731-13-03

**Authority and duties of hearing examiners.**

- (A) Hearings shall be conducted before hearing examiner pursuant to section 4731.23 of the Revised Code.
- (B) All hearings shall be open to the public, but the hearing examiner conducting a hearing may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing examiner determines to close the hearing, the hearing examiner shall state the reasons in the public record.
- (C) The hearing examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order and ensure the development of a clear and adequate record.
- (D) The authority of the hearing examiner shall include, but not be limited to, authority to:
  - (1) Administer oaths and affirmations;
  - (2) Order issuance of subpoenas and subpoenas duces tecum to require the attendance of witnesses at hearings and depositions in lieu of live testimony and to require the production of evidence for hearings and depositions in lieu of live testimony;
  - (3) Examine witnesses and direct witnesses to testify;
  - (4) Make rulings on the admissibility of evidence;
  - (5) Make rulings on procedural motions, whether such motions are oral or written;
  - (6) Hold prehearing conferences;
  - (7) Request briefs before, during or following the hearing;
  - (8) Prepare entries, proposed findings, proposed orders or reports and recommendations pursuant to rule 4731-13-15 of the Administrative Code;
  - (9) Make rulings on requests to broadcast, record, televise or photograph the hearing;
  - (10) Take such other actions as may be necessary to accomplish the purposes of

paragraph (C) of this rule; and

- (11) Determine the order in which any hearing shall proceed.
- (E) The authority of the hearing examiner shall not include authority to grant motions for dismissal of charges, or modify, compromise or settle charges or allegations.
- (F) The hearing examiner shall have such other powers, duties, and authority as are granted by statutes or rules.
- (G) All rulings on evidence and motions and on any other procedural matters shall be subject to review by the board upon presentation of the proposed findings of facts and conclusions of law of the hearing examiner. When such rulings warrant, the board may remand the matter to the attorney hearing examiner.
- (H) The hearing examiner may assist the board by reviewing the evidence in matters that have been subject to a notice of opportunity for hearing but for which no timely hearing request has been filed. In such matters the hearing examiner may prepare proposed findings and a proposed order for the board's consideration.
- (I) Briefs provided under paragraph (D)(7) of this rule shall comply with the requirements set forth in rule 4731-13-07.1 of the Administrative Code.
- (J) Upon the motion of a party, or upon the hearing examiner's own motion, the hearing examiner shall have the authority to conduct hearings by use of a live, real-time video-conferencing system. Such a system must provide a means, through the use of software that is widely accessible to the general public without charge, for the hearing examiner, attorneys, the respondent, witnesses, and a court reporter, along with any other necessary participants, to see and converse with each other and to display documentary and physical evidence. Further, the video-conferencing system must also provide a means by which members of the public may view and listen to the hearing.

4731-13-06

**Continuance of hearing.**

- (A) Except in matters of summary suspension, the board or the board through its hearing examiner, shall continue the initially scheduled hearing upon its own motion in order to more efficiently and effectively conduct its business unless the circumstances establish that a continuance would not serve the interest of justice. The new hearing date shall be set according to the case management schedule approved by the board for the type of violation alleged and available from the board's ~~webiste~~[website](http://med.ohio.gov/) at <http://med.ohio.gov/>. In setting the new hearing date, the hearing examiner shall make a reasonable attempt to obtain input from the parties. Upon motion of at least one of the parties demonstrating extraordinary circumstances, the hearing examiner may approve a special case management schedule.
- (B) A hearing shall be continued only with the approval of the board or its hearing examiner based upon a written motion of a party or upon the initiative of the hearing examiner.
- (C) A motion for a continuance shall not be granted unless good cause and proper diligence is demonstrated..
- (1) Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings.
- (2) In no event will a motion for a continuance requested less than fourteen days prior to the scheduled date of the hearing be granted unless it is demonstrated that good cause exists which would justify the granting of a continuance.
- (D) No continuance of a hearing for a summary suspension shall be granted without the written agreement of the respondent or the respondent's attorney or attorneys and of the board through its secretary and supervising member.
- (E) If a continuance is granted, the entry granting the continuance shall specify the dates to which the hearing is continued and shall be set in accordance with the case management schedule. Upon motion of at least one of the parties demonstrating extraordinary circumstances, the hearing examiner may approve a special case management schedule.
- (F) Hearings shall not be continued due to the unavailability of a subpoenaed witness without approval of the hearing examiner.
- (1) The hearing examiner may hold the record open to accept a deposition in lieu of live testimony of a subpoenaed witness.

- (2) The procedures set forth in rules 4731-13-20 and 4731-13-20.1 of the Administrative Code shall apply to any deposition in lieu of live testimony taken pursuant to this rule.



4731-13-07.1

**Form and page limitations for briefs and memoranda.**

- (A) All hearing briefs provided under paragraph (D)(7) of rule 4731-13-03 of the Administrative Code and memoranda filed under rule 4731-13-07 of the Administrative Code shall be provided or filed subject to the following requirements:
- (1) The body text of a brief or memorandum shall be set in a legible typeface of at least twelve points, either single-spaced or double-spaced.
  - (2) A brief or memorandum shall not exceed fifteen pages exclusive of the certificate of service and the appendix unless an exception is granted in advance pursuant to paragraph (A)(3) of this rule.
  - (3) Upon motion by either party, or upon the ~~inititative~~initiative of the hearing examiner, the hearing examiner may authorize briefs or memoranda that exceed fifteen pages, up to a maximum of thirty pages exclusive of the certificate of service and the appendix, in matters that involve complex legal issues. Unless made upon the record at hearing, a motion for such a determination shall be filed no later than seven days prior to the deadline for filing the brief or memorandum.
  - (4) If a reply memorandum is authorized pursuant to paragraph (C) of rule 4731-13-07 of the Administrative Code, that memorandum shall not exceed seven pages exclusive of the certificate of service and the appendix.
- (B) Briefs and memoranda provided in contravention of the requirements set forth in paragraph (A) of this rule will be accepted for filing, however, pages beyond the fifteen page limit shall not be considered. ~~Memoranda filed in contravention of the requirements set forth in paragraph (A) of this rule will be accepted for filing.~~

4731-13-07

**Motions.**

- (A) Except as otherwise provided under Chapter 4731-13 of the Administrative Code or Chapter 119. of the Revised Code, all motions, unless made upon the record at hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds therefore, and shall be filed in compliance with rule 4731-13-08 of the Administrative Code. Except in cases of summary suspensions pursuant to division (G) of section 4731.22 of the Revised Code, all prehearing motions except motions for continuance pursuant to rule 4731-13-06 of the Administrative Code and motions to quash pursuant to paragraph (F) of rule 4731-13-13 of the Administrative Code, shall be made no later than fourteen days before the date of hearing unless express exception is granted by the hearing examiner or by this chapter.
- (1) If filed by email, motions and supporting or opposing memoranda shall be filed as [pdf](#) attachments to emails, and not be incorporated into the body of the email itself.
  - (2) All supporting or opposing memoranda shall comply with rule 4731-13-07.1 of the Administrative Code.
- (B) All motions, together with any supporting documentation, shall be served as provided in rule 4731-13-09 of the Administrative Code.
- (C) Any response to a prehearing motion shall be filed within ten days after service of that motion, or at such other time as is fixed by the hearing examiner. A movant may reply to a response only with the permission of the hearing examiner.
- (D) Before ruling upon a written motion, the hearing examiner shall consider all memoranda and supporting documents filed. The hearing examiner shall enter a written ruling and shall issue copies to each representative of record. The ruling on all motions made at hearing shall be included in the hearing transcript except where the hearing examiner elects to take the motion under advisement and issue a written ruling at a later time. The hearing examiner shall include in each written ruling on a motion a statement of the reasons therefore.
- (E) Except as otherwise provided in this chapter or Chapter 119. of the Revised Code, rulings on all motions filed subsequent to the issuance of the report and recommendation shall be rendered by the board or, if the board is not in session, by its president or the vice president if the president is unavailable acting on its behalf.
- (1) Responses to motions shall be filed no later than three days after service of the motion as set forth in the certificate of service attached to the served copy of

the motion. A movant may reply to a response only with the permission of the board through its president or vice president if the president is unavailable, and only under extraordinary circumstances, such as an assertion that a material inaccuracy of fact or law was provided in the response.

- (2) Motions for extension of time for filing objections shall be filed on or prior to the deadline for filing the objections. A motion for extension of time for filing objections filed after the deadline will not be considered absent extraordinary circumstances, as determined by the board through its president or vice president if the president is unavailable.

\*\*\* DRAFT - NOT YET FILED \*\*\*

4731-13-08

**Filing.**

- (A) A document is "filed" when it is received and time stamped in the offices of the board. For documents received via e-mail [or through any electronic filing system implemented by the board](#), the time stamp provided by the board's computer shall be the time of receipt. Documents received after five p.m. eastern standard time shall not be considered for filing until the next business day.
- (B) An original of any document required to be served by Chapter 4731-13 of the Administrative Code shall be filed with the board not more than three days after service.
- (C) All filings shall be addressed to the board to the attention of its hearing unit.

4731-13-09

**Service.**

To be considered by the board and its hearing examiner, any document required by Chapter 4731-13 of the Administrative Code to be served shall:

- (A) Be served either personally, by regular mail, by facsimile, ~~or~~ by e-mail, or through any electronic filing system which provides automatic notice to parties utilized by the board. Service is complete on the date of mailing, e-mailing, facsimile or personal service of the document.
- (B) Contain the name, address, and telephone number of the person submitting the document and shall be appropriately captioned to indicate the name of the respondent.
- (C) Have a certificate of service on it. A certificate of service shall be signed and contain the following:
  - (1) The date of service;
  - (2) The method by which service was made;
  - (3) The address where service was made; and
  - (4) The name of the person or authority who was served.

4731-13-13

**Subpoenas for purposes of hearing.**

- (A) Upon written request, the board shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Each subpoena shall indicate on whose behalf the witness is required to testify. Copies of such subpoenas shall be issued to each representative of record.
- (B) For purposes of a hearing conducted pursuant to Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date and time at which the individual is to appear. With respect to the production of books, records and papers, such request [shall set a compliance date in accordance with the exchange deadlines established by the hearing examiner in rule 4731-13-18.](#) ~~may not specify a date of compliance less than fourteen days prior to hearing.~~
- (C) Except upon leave of the board or its hearing examiner, subpoena requests are to be filed with the board as provided in rule 4731-13-08 of the Administrative Code at least twenty-one days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.
- (D) In the event that the number of subpoenas requested appears to be unreasonable, the board or its hearing examiner may require a showing of necessity therefore and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within seven days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
- (E) After the hearing has commenced the hearing examiner may order the issuance of subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to each representative of record.
- (F) Upon motion and for good cause, the hearing examiner may order any subpoena be quashed. Motions to quash shall be made in the manner provided in rules 4731-13-07 and 4731-13-08 of the Administrative Code, except that motions to quash shall be filed at least seven days prior to the date of compliance. The non-moving party may file a response no later than five days after service of the motion to quash or at least one day prior to the date of compliance whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.
- (G) Witnesses shall not be subpoenaed to prehearing conferences.

4731-13-15

**Reports and recommendations.**

- (A) Within thirty days following the close of a hearing conducted under Chapter 119. of the Revised Code, the hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the board. The hearing shall not be considered closed until such time as the record is complete, as determined by the hearing examiner.
- (B) A copy of such written report shall be issued to each representative of record. The copy issued to the respondent's representative of record shall be accompanied by notice of the date the report and recommendation is to be considered by the board.
- (C) Either representative of record may, within ten days of receipt of the hearing examiner's report and recommendation, file written objections to the report and recommendation. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the hearing examiner's recommendation, unless otherwise determined by the board.
- (D) Upon written request, the board may grant extensions of the time within which to file objections to the report and recommendation. In the event that the board is not in session, the president of the board may grant such extensions.
- (E) Unless otherwise determined by the board based upon written motion of a party, the board shall consider the hearing examiner's report and recommendation and any objections thereto at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may do any or all of the following: order additional testimony to be taken; permit the introduction of further documentary evidence; or act upon the report and recommendation. For purposes of taking such additional testimony or documentary evidence, the board may remand to the hearing examiner.
- (F) Any motion to reopen the hearing record for purposes of introducing newly discovered material evidence that with reasonable diligence, could not have been discovered and produced at the hearing shall be filed in the manner provided in rules 4731-13-07 and 4731-13-08 of the Administrative Code. Such motion to reopen shall be filed not later than fourteen days prior to the scheduled consideration by the board of the hearing examiner's report and recommendation, unless the newly discovered material evidence, with reasonable diligence, could not have been discovered earlier than fourteen days prior to the scheduled consideration by the board. The other party shall have an opportunity to file, not later than seven days prior to the scheduled consideration by the board of the hearing examiner's report and recommendation, a memorandum contra to said motion.

Any submission of documentation or evidence received by the board after the close of the record and prior to the date of consideration of the hearing examiner's report

and recommendation by the board shall be deemed a motion to reopen the record pursuant to this rule. If such motion is filed prior to the issuance of the hearing examiner's report and recommendation, the hearing examiner shall rule on the motion. If such motion is filed subsequent to the issuance of the hearing examiner's report and recommendation, the board shall rule on the motion. All submitted materials must be accompanied by an affidavit from the moving party that sets forth how the evidence is material, how the evidence is newly discovered, and why it could not have been produced at hearing. The affidavit must also show that the party made a reasonably diligent effort to obtain the material prior to hearing. Failure to comply with the requirements of this rule shall result in the exclusion of the submitted material unless the moving party shows good cause and the board votes to admit the document or evidence.

- (G) Without leave of the board, no party shall be permitted to address the board at the time of consideration of the hearing examiner's report and recommendation. Any request for such leave shall be filed by motion no less than ~~five~~seven days prior to the date the report and recommendation is to be considered by the board. No such leave shall be granted unless the opposing representative of record has been actually notified of the request, unless otherwise determined by the board.
  
- (H) If a request to address the board is granted, the opposing party may also address the board.



4731-13-16

**Reinstatement or restoration of certificate.**

Any disciplinary action taken by the board which results in a suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the certificate may be reinstated or restored, unless terms for reinstatement or restoration are otherwise governed by statute.

Such conditions may include but are not limited to:

- (A) Submission of a written application for reinstatement or restoration;
- (B) Payment of all appropriate fees, civil ~~penalties~~penalties, and fines as provided in Chapter 4731. of the Revised Code;
- (C) Mental or physical examination;
- (D) Additional education or training;
- (E) Reexamination;
- (F) Practice limitations;
- (G) Participation in counseling programs;
- (H) Demonstration that the respondent can resume practice in compliance with acceptable and prevailing standards.

4731-13-17

**Settlements, dismissals, and voluntary surrenders.**

- (A) Settlement shall be negotiated on behalf of the board by the secretary and supervising member of the board. Any settlement agreement containing terms not in conformity with the disciplinary guidelines adopted by the board must have the concurrence of the board's president prior to execution.
- (B) Any matter which is the subject of a hearing may be settled by the parties. If settlement negotiations continue after the final day of hearing, the parties shall, within ten days of the final day of hearing, jointly present the hearing examiner with written notice specifying a period of time, not to exceed thirty days, during which the record shall be held open for purposes of negotiation.
- (1) If the hearing record has closed or closes during the period of time specified in the parties' joint notice, such notice shall toll the hearing examiner's thirty-day time period for issuance of findings of fact and conclusions of law pursuant to section 4731.23 of the Revised Code.
- (2) If, at the conclusion of the time period specified by the parties' joint notice, the hearing examiner has not received appropriate written notice that a settlement agreement has been executed, the tolling of the hearing examiner's thirty-day period for issuance of findings of fact and conclusions of law shall cease, no further settlement negotiations shall be undertaken, and no settlement agreement shall be executed in lieu of the filing of a report and recommendation by the hearing examiner and the issuance of a final order by the board.
- (C) Before being submitted to the board for ratification, all settlement agreements shall be in writing and shall be signed by the respondent and by the respondent's attorney, if any. Counsel for the board shall sign the settlement agreement as follows:
- (1) If the settlement agreement was negotiated prior to the issuance of a notice of opportunity for hearing, an appropriate board staff attorney shall sign the agreement.
- (2) If the settlement agreement was negotiated subsequent to the issuance of a notice of opportunity for hearing, an attorney from the office of the attorney general shall sign the agreement.
- (D) Signed settlement agreements shall be submitted to the board for ratification.
- (E) If the board ratifies a settlement agreement, the secretary and supervising member of the board shall sign the ratified agreement. ~~following shall sign the ratified~~

~~agreement:~~

~~(1) The secretary and supervising member of the board shall sign the ratified agreement.~~

~~(2) If the settlement agreement was negotiated prior to the issuance of a notice of opportunity for hearing, an appropriate board staff attorney shall sign the ratified agreement.~~

~~(3) If the settlement was negotiated subsequent to the issuance of a notice of opportunity for hearing, an attorney from the office of the attorney general shall sign the ratified agreement.~~

(F) A notice of dismissal may be entered at any time prior to the filing of the report and recommendation. If negotiations continue after the final day of hearing, the procedures in paragraph (B) of this rule shall be followed. A notice of dismissal shall be authorized and signed by the board's secretary and supervising member.

(G) This rule shall neither apply to nor limit the authority granted the board under division (M) of section 4731.22 of the Revised Code with regard to the surrender of a license or certificate or the withdrawal of an application for a license or certificate.

(H) In the event that the board issues an amended notice of opportunity for hearing, the original notice of opportunity for hearing is automatically superseded by the amended notice. To request a hearing pursuant to Chapter 119. of the Revised Code, the respondent must file a new hearing request in response to the amended notice of opportunity for hearing. For purposes of this chapter of the Administrative Code, "amended cite" means a cite in which there has been a substantive alteration to one or more factual allegations or statutory charges, other than correction of a clerical or technical error, that relates to the allegations set forth in the original notice.

4731-13-33

**"Physicians' Desk Reference".**

The board or its hearing examiner may utilize the "Physicians' Desk Reference" (PDR) for information regarding the FDA approved labeling for dangerous drugs. The edition(s) of the PDR utilized shall be the edition(s) contemporaneous with the allegations set forth in the notice of opportunity for hearing upon which the hearing is based. The "PDR" is a well-known and readily available text. It may be found at libraries, bookstores or on the internet at [www.pdr.net](http://www.pdr.net). [The board or its hearing examiner may also utilize the US National Library of Medicine at \[medlineplus.gov\]\(http://medlineplus.gov\).](#)

4731-13-36

**Disciplinary actions.**

For purposes of Chapters 4730., 4731., [4759.](#), 4760., [4761.](#), 4762., 4774., and 4778. of the Revised Code and Chapters 4730., 4731., 4774., and 4778. of the Administrative Code:

- (A) "Permanent revocation" means the permanent loss of a certificate to practice in Ohio and the inability, at any time, to reapply for or hold any certificate to practice in Ohio. An individual whose certificate has been permanently revoked shall forever thereafter be ineligible to hold any certificate to practice, and the board shall not accept from that individual an application for reinstatement or restoration of the certificate or for issuance of any new certificate.
  
- (B) "Revocation" means the loss of a certificate to practice in Ohio. An individual whose certificate has been revoked shall be eligible to submit an application for a new certificate. The application for a new certificate shall be subject to all requirements for certification in effect at the time the application is submitted. In determining whether to grant such an application, the board may consider any violations of Chapters 4730., 4731., [4759.](#), 4760., [4761.](#), 4762., 4774., and 4778. of the Revised Code, whichever is applicable, that were committed by the individual before or after the revocation of the individual's certificate, including those that formed the basis for the revocation. All disciplinary action taken by the board against the revoked certificate shall be made a part of the board's records for any new certificate granted under this rule.
  
- (C) "Suspension" means the temporary loss of a certificate to practice in Ohio. A suspension shall be imposed for either a definite term or an indefinite term.
  - (1) An order for a definite term of suspension shall specify the time period of the suspension. A certificate which has been suspended for a definite term shall be reinstated at the conclusion of the specified time period.
  
  - (2) An order for an indefinite term of suspension shall contain a written statement of the conditions under which the certificate may be reinstated. Such conditions may include, but are not limited to, the following:
    - (a) A minimum time period of suspension;
  
    - (b) Submission of a written application for reinstatement;
  
    - (c) Payment of all appropriate fees, civil penalties, and fines as provided in Chapters 4730., 4731., [4759.](#), 4760., [4761.](#), 4762., 4774., and 4778. of the Revised Code;

- (d) Mental or physical examination;
  - (e) Additional education or training;
  - (f) Reexamination;
  - (g) Participation in counseling programs;
  - (h) Demonstration that the certificate holder can resume practice in compliance with acceptable and prevailing standards;
  - (i) Satisfactory completion of all terms, conditions or limitations placed upon the certificate holder through a board-approved consent agreement or board order;
  - (j) Passage of an examination to determine present fitness to resume practice, pursuant to section 4731.222 of the Revised Code; and
  - (k) Acceptance of conditions of probation or practice limitations.
- (D) "Limitation" means to preclude the certificate holder from engaging in a particular conduct or activity, to impose conditions on the manner in which that conduct or activity may be performed, or to require the certificate holder to abide by specific conditions in order to continue practicing medicine. A limitation shall be either temporary or permanent.
- (E) "Probation" means a situation whereby the certificate holder shall continue to practice only under conditions specified by the board. Failure of the certificate holder to comply with the conditions of probation may result in further disciplinary action being imposed by the board. The probation period shall be for either a definite or an indefinite term. If probation is for an indefinite term, the board shall establish a minimum probation period and the board shall release the certificate holder from the conditions of probation upon completion of the minimum probation period and upon the board's determination that the purpose of probation has been fulfilled.
- (F) "Reprimand" means the certificate holder is formally and publicly reprimanded in writing.
- (G) "No Further Action" means that the board finds that a violation occurred but declines to impose any disciplinary sanction. No further action shall be ordered by the board

under circumstances where the board finds that all necessary remedial measures have been completed by the certificate holder, future monitoring is unnecessary and reprimand is not warranted.

- (H) "Dismissal" means that the board finds that no violation occurred.
- (I) "Grant of Application for Certificate" means that the board grants an application for a certificate to practice. In matters where disciplinary violations have been alleged against an applicant for a certificate, the grant of an application for certificate may be accompanied by a suspension, limitation, probation, reprimand or no further action.
- (J) "Permanent Denial" and "Permanent Refusal to Register or Reinstate" mean the permanent denial of an application for a certificate to practice in Ohio. An individual whose application for a certificate has been permanently denied shall forever thereafter be ineligible to apply to the board for any certificate to practice, and the board shall not accept from that individual an application for issuance of any certificate.
- (K) "Denial" and "Refusal to Register to Reinstate" mean the denial of an application for a certificate to practice in Ohio. An individual whose application for a certificate has been denied shall be eligible to submit a new application for a certificate. The new application shall be subject to all requirements for certification in effect at the time the new application is submitted. In determining whether to grant a new application, the board may consider any violations of Chapters 4730., 4731., [4759.](#), 4760., [4761.](#), 4762., 4774., and 4778. of the Revised Code, whichever is applicable, that were committed by the individual before or after the denial of the individual's previous application, including those that formed the basis for the denial.

4759-4-04

Continuing Education.

(A) An applicant for renewal or restoration of a license shall demonstrate compliance with the continuing education/professional development requirements of this rule.

(B) An applicant for license renewal or restoration shall:

(1) If licensee is a registered dietitian, certify completion of the continuing education required to hold current registration with the commission on dietetic registration, and complete one hour of ethics or laws, rules, and regulations governing the practice of dietetics in the two-year renewal period. These continuing education hours shall be from activities approved by the commission on dietetic registration, academy of nutrition and dietetics, or the Ohio academy of nutrition and dietetics; or

(2) If licensee is not a registered dietitian, certify the completion of thirty hours of continuing education completed during the two-year renewal period. At least one hour in each renewal period shall relate to ethics or laws, rules, and regulations governing the practice of dietetics. These continuing education hours shall be from activities approved by the commission on dietetic registration, academy of nutrition and dietetics, or the Ohio academy of nutrition and dietetics.

In addition for each biennial renewal period, a licensee that is not a registered dietitian shall use and document a learning process for that renewal period that is consistent with the commission on dietetic registration. Specifically, the licensee that is not a registered dietitian shall document the following: self-reflection on competencies and learning needs, development of a learning plan with goals to maintain and improve on existing competencies and/or develop competencies in new areas or areas of learning deficiency; and progress on the learning plan documented through successful completion of activities in the areas specified in the learning plan. This learning plan must be documented and available to the board upon request pursuant to the audit and disciplinary provisions of divisions (E) and (F) of section 4759.06 of the Revised Code.

(C) All licensees are subject to the audit and disciplinary provisions of divisions (E) and (F) of section 4759.06 of the Revised Code for failure to comply with this rule. Licensees are responsible for retaining records of completion of the continuing education hours required.



## To Be Rescinded

\*\*\* DRAFT - NOT YET FILED \*\*\*

4759-4-04

### Continuing education.

(A) Each applicant for renewal or restoration of a license shall demonstrate compliance with the continuing education/professional development requirements of this rule.

(B) Each applicant for license renewal or restoration shall:

(1) Be a registered dietitian; or

(2) If not a registered dietitian, establish a five year continuing education cycle with the board, and adhere to that schedule for meeting requirements consistent with the options offered by "The commission on dietetic registration."

For each five year cycle an individual learning plan shall be submitted and approved by the board and a log of learning activities maintained by the licensee. A copy of the log shall be submitted directly to the state medical board of Ohio postmarked by June thirtieth of the year that the cycle ends, and shall demonstrate successful completion of at least seventy-five continuing professional education units.

(C) Each applicant for renewal or restoration of a license shall report to the board completion of at least one continuing education unit of board approved education in jurisprudence.

Board approved programs in jurisprudence shall include approved programs and activities relating to current laws, rules, and regulations dealing with the practice of dietetics and recent changes that have occurred to those laws, rules, and regulations. A list of approved programs and activities will be posted on the board's web site at the following link: <https://med.ohio.gov/>.

4759-4-08

**Limited permit.**

(A) The board may grant a limited permit to a person who has completed the education and preprofessional requirements for licensure upon the following conditions:

(1) The person has filed a completed application for a limited permit and paid the appropriate fee;

(2) The application contains any required statements or transcripts verifying completion of the academic and preprofessional requirements in order to qualify to take the examination for licensure; and

(3) The applicant indicates intent to take the examination for licensure within six months of the issuance of the limited permit.

(B) The permit shall expire if the permit holder fails to take the examination in a timely manner or fails the examination twice.

(C) Limited permits shall expire six months after the date of issuance.

(D) A limited permit may be renewed once.

(E) A limited permit holder who fails the examination must report the results to the board office immediately.

(1) The first time the limited permit holder fails, the limited permit holder shall practice only under the direct supervision of an Ohio licensed dietitian.

(2) The second time the limited permit holder fails, the limited permit expires immediately.

(F) A limited permit shall not be issued to a person who has failed the examination two or more times.

(G) The licensed dietitian who provides direct supervision of a person who has failed the examination and holds a limited permit shall provide sufficient guidance and direction to enable the person to perform competently and to protect the public.

(1) The licensed dietitian shall document a supervision plan for the limited permit holder to include specific goals and strategies for assuring competent entry level practice. The supervising dietitian shall periodically document the limited permit holder's progress. Documentation shall include, but is not limited to, dates of conferences, supervisory notes, written evaluations and recommendations. Documentation should be maintained in the licensed dietitian's records and be available upon request of the board.

(2) Direct supervision means that the licensee providing the supervision needs to be readily available by telecommunication, or in person and the licensee must

review the work of the supervisee at least every seven days. When reviewing the work of a supervisee, the licensee shall comply with standards for professional responsibility and practice set forth in Chapter 4759-6 of the Administrative Code.

(H) It is the licensed dietitian's responsibility to supervise the limited permit holder and to adequately document that supervision. Failure to do so shall be considered a violation of the minimal standards of care for the licensed dietitian and may result in discipline of the licensed dietitian by the state medical board.

## To Be Rescinded

\*\*\* DRAFT - NOT YET FILED \*\*\*

4759-4-08

### Limited permit.

- (A) The board may grant a limited permit to a person who has completed the education and preprofessional requirements for licensure upon the following conditions:
- (1) The person has filed a completed application for a limited permit and paid the appropriate fee;
  - (2) The application contains any required statements or transcripts verifying completion of the academic and preprofessional requirements in order to qualify to take the examination for licensure; and
  - (3) The applicant indicates intent to take the examination for licensure within seven months of the issuance of the limited permit.
- (B) The permit shall expire if the permit holder fails to take the examination in a timely manner or fails the examination twice.
- (C) Limited permits shall expire the following October thirty-first for those issued between April first and September thirtieth and the following April thirtieth for those issued between October first and March thirty-first.
- (D) A limited permit may be renewed.
- (E) A limited permit holder who fails the examination must report the results to the board office immediately.
- (1) The first time the limited permit holder fails, the limited permit holder shall practice only under the direct supervision of an Ohio licensed dietitian as approved by the board.
  - (2) The second time the limited permit holder fails, the limited permit expires immediately.
- (F) A limited permit shall not be issued to a person who has failed the examination two or more times.
- (G) The licensed dietitian who provides direct supervision of a person who has failed the examination and holds a limited permit shall provide sufficient guidance and direction to enable the person to perform competently. Direct supervision means that the licensee providing the supervision needs to be readily available by telecommunication, or in person and the licensee must review the work of the

supervisee at least every fourteen days. When reviewing the work of a supervisee, the licensee shall comply with standards for professional responsibility and practice set forth in Chapter 4759-6 of the Administrative Code.

4759-6-02

**Standards of professional performance.**

Every licensee shall comply with the following standards of professional performance ~~in accordance~~ consistent with the June 1, 2018 "Code of Ethics for the Nutrition and Dietetics Profession" adopted by ~~of~~ the Academy of Nutrition and Dietetics~~":~~ which is available from the website of the state medical board at the following link: <https://med.ohio.gov>.

(A) Credentials.

- (1) The licensee shall accurately present professional qualifications and credentials.
- (2) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic services have been rendered only if the licensee has provided or supervised those services.

(B) Provision of service.

The licensee shall provide professional service based on client expectations and needs. Quality service is provided, facilitated and promoted based on the licensee's knowledge, experience and understanding of client needs and expectations.

- (1) The licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of professional services, including, but not limited to race, creed, sex, age, or handicap.
- (2) The licensee shall assure that sufficient information is available to enable a client to establish mutual goals and make informed decisions.

(C) Quality in practice.

- (1) The licensee shall systematically evaluate the quality of service and improve practice based on evaluation results.
- (2) Quality practice requires regular performance evaluation and continuous improvement.
- (3) The licensee shall adhere to acceptable standards for that licensee's area of practice and be designated to deliver services as approved by their facility. The authority and privilege to practice within the scope shall be consistent with all state and federal laws and rules governing the practice of dietetics, ~~the standards of practice of the "Academy of Nutrition and Dietetics" and other regulatory agencies such as, but not limited to, the "Centers for Medicare and~~

~~Medicaid Services" (CMS) guidelines as published in the Federal Register.~~

- (4) The licensee shall generate, interpret and effectively apply evidence based interventions substantiated by research.

~~"Evidence based" interventions means the conscientious, explicit judicious use of current best evidence in making decisions about the care of patients and is consistent with the Centre for evidence based medicine definition in "Evidence based medicine; what it is and what it isn't", Sackett, DL et. al. 1996.~~

(D) Competence and accountability.

- (1) The licensee shall assume responsibility and accountability for personal competence in practice and engage in lifelong learning. Competent and accountable practice includes continuous acquisition of knowledge and skill development.
  - (a) The licensee shall establish performance criteria, compare actual performance with expected performance, document results and take appropriate action.
  - (b) The licensee shall conduct self-assessment of strengths and weaknesses at regular intervals and develop, implement and evaluate an individual plan for practice based on assessment of client needs, current knowledge, and clinical experience.
- (2) The licensee shall maintain knowledge and skills required for continued professional competence. ~~in a manner consistent with the requirements of the Commission on dietetic registration.~~
- (3) The licensee shall recognize the limits of that licensee's qualifications and seek counsel or make referrals as appropriate.

(E) Conflict.

- (1) The licensee shall remain free of conflict of interest while fulfilling the objectives ~~and~~ and maintaining the integrity of the dietetic profession.
- (2) The licensee shall advance and promote the profession while maintaining professional judgment, honesty, integrity, loyalty, and trust to ~~colleagues~~ colleagues, clients and the public.

(F) Endorsement.

The licensee shall promote or endorse products only in a manner that is true and not misleading.

(G) Communication and application of knowledge.

The licensee shall effectively apply knowledge and communicate with others to achieve common goals by effective sharing and application of their unique knowledge and skills in food, human nutrition and management services.

(H) Utilization and management of resources.

The licensee shall use resources effectively and efficiently.

The licensee shall use a systematic approach to identify, monitor, analyze and justify the use of time, money, facilities, staff and other resources while considering safety, effectiveness and cost in planning and delivering interventions.

(I) Approval of a general program of weight control.

A "general program of weight control" as defined in rule 4759-5-06 of the Administrative Code must be approved by either a registered or licensed dietitian or physician licensed in Ohio. For purposes of division (J) of section 4759.10 of the Revised Code, the licensee shall provide written approval of all components of the general program of weight control and assume responsibility for the following:

- (1) Guidelines for instruction: Program content and written step-by-step information that the presenter provides to customers to enable them to follow the meal plan and other aspects of a general program of weight control.
- (2) Meal plans: General categories or groups of foods and suggested combinations of specific foods. Meal plans shall not be individualized for specific persons, conditions, or disease states.
- (3) Handouts: Any information distributed in conjunction with the general program of weight control.
- (4) Supplements: Products, including vitamins, minerals, herbs and other substances used as part of, or an enhancement to, a general program of weight control. The use of these products shall be substantiated by current scientific evidence.



(J) Supervision.

When providing supervision of another for purposes of division ~~(F)~~(G) of section 4759.06 and divisions (B) and (E) of section 4759.10 of the Revised Code, and rule 4759-5-02 of the Administrative Code, a licensee shall assume responsibility for the supervision in a manner that protects the public.

(K) Compliance.

The licensee shall comply with all laws and regulations concerning the profession, but shall seek to change them if the laws or regulations are inconsistent with the best interest of the public and the profession. The licensee:

- (1) Shall accept the obligation to protect society and the profession by upholding the standards of practice and standards of professional performance; and
- (2) Shall report alleged violations of the laws, rules and standards to the state medical board of dietetics. ~~board of dietetics.~~

(L) Interpretation of information and application of research.

- (1) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that a legitimate difference of opinion may exist.
- (2) The licensee shall apply, participate in, or generate ~~applies, participates in, or generates~~ research to enhance practice and to improve safety and quality of dietetic practice and services.

(M) Confidentiality.

The licensee shall maintain information consistent with legal obligations and client confidentiality.

(N) Professional conduct.

- (1) The licensee shall conduct all practices with honesty, integrity, and fairness; and
- (2) The licensee shall make and fulfill professional commitments in good faith; and
- (3) The licensee shall inform the public and colleagues of services by use of factual

information.

- (4) The licensee shall make reasonable efforts to avoid bias in professional evaluation.

(O) A violation of any provision of this rule, as determined by the board, shall constitute “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 a patient is established” as that clause is used in division (A)(11) of section 4759.07 of the Revised Code.