Rules & Policies Agenda for Board Meeting
July 14, 2021

A. Rule Review Update
B. Adoption of Rules
C. Public Rules Hearing
D. Initial Circulation of Rules
E. Light-Based Medical Device Rules
F. Telemedicine FAQ’s
G. Legislative Update
MEMORANDUM

TO: Betty Montgomery, President
    Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Rule Review Update

DATE: June 23, 2021

Attached please find the updated rule review schedule and spreadsheet.

Requested Action: No action requested.
# Legal Dept. Rules Schedule

**As of 6/17/21**

## For Adoption at July Board Meeting

**Light Based Medical Devices**
- 4731-18-01
- 4731-18-02
- 4731-18-03
- 4731-18-04

**Hearing Rules**
- 4731-13-01
- 4731-13-03
- 4731-13-06
- 4731-13-07
- 4731-13-07.1
- 4731-13-08
- 4731-13-09
- 4731-13-13
- 4731-13-15
- 4731-13-16
- 4731-13-17
- 4731-13-33
- 4731-13-36

**Dietetics Rules**
- 4759-4-04
- 4759-4-08
- 4759-6-02

## RULES AT CSI

**Comment Deadline 10/19/20**
- 4731-11-03
- 4731-11-04
- 4731-11-04.1

**Comment Deadline 5/14/21-Released from CSI on 6.2.21. Ready to file with JCARR**
- 4730-1-07
- 4730-2-07
- 4731-35-01
- 4731-35-02

## RULES AT JCARR

**Hearing to be held – 6/28/21**
- 4731-11-11
- 4731-14-01
- 4731-23-02
- 4731-26-01
- 4731-26-02
- 4731-26-03

**No Change Rules-Filed 4-12-21 – JCARR jurisdiction ends 7/11/21**
- 4731-13 – Hearing Rules (23)

**No Change Rules-Filed 5-27-21 – JCARR jurisdiction ends 8/25/21**
- 4731-11-02
- 4731-11-07
- 4731-11-08
- 4731-23-01
- 4731-23-03
- 4731-23-04

## Rules Needing Amendments Due to HB442

The following rules need to be amended or rescinded to remove references to cosmetic therapy and oriental medicine:

- 4731-16-01 Impaired Practitioners Definitions
- 4731-16-18 Eligibility for one-bite program

## RULES SENT FOR INITIAL CIRCULATION

**Comment Deadline 9/25/20**
- 4731-6-14

**Comment Deadline 5/17/21**
- 4731-6-05

**Comment Deadline 7/2/21**
- 4731-1-01
- 4731-1-02
- 4731-1-03
- 4731-1-04
- 4731-1-05
- 4731-1-07
- 4731-1-08
- 4731-1-09
- 4731-1-10
- 4731-1-11
- 4731-1-12
- 4731-1-15
- 4731-1-16
- 4731-1-17
- 4731-1-18
- 4731-1-19
- 4731-16-02
- 4731-16-05
- 4731-16-08
- 4731-22-07
- 4731-30-03
- 4731-36-01
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<th>CSI filing</th>
<th>CSI recommendation</th>
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MEMORANDUM

TO: Betty Montgomery, President
    Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Rules for Adoption

DATE: June 25, 2021

This memo proposes adoption, amendment and rescission for rules as listed below.

The public hearing was held on May 17, 2021. One comment in favor of the proposed rules was received. The rules were considered at the JCARR meeting on June 7, 2021 and no comments were received. JCARR jurisdiction ended on June 13, 2021 and June 16, 2021.

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

The public hearing was held on May 17, 2021. Twenty-two comments were received. The rules were placed in TBR status so the Board could consider the comments. The Board approved amendments to the rules at its June 9, 2021 meeting. The rules were refiled on June 9, 2021 and considered at the JCARR meeting on June 25, 2021. One comment was received immediately prior to the JCARR meeting. JCARR approved the rules with no questions. JCARR jurisdiction ends on July 9, 2021.

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 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

The public hearing was held on May 17, 2021. A typographical error was discovered and the Board approved correction of the error. The rule was refiled on June 9, 2021 and considered at the JCARR meeting on June 25, 2021. JCARR jurisdiction ends on July 9, 2021.

Dietetics Rules

4759-6-02 Standards of professional performance Proposed to be Amended
The Hearing Examiner’s report, materials and transcript were provided to you at the June Board meeting. A copy of the comment provided to JCARR on the light based medical device rules is attached.

**Requested motion:** I move to adopt, amend, and rescind the rules as described in the June 25, 2021 memorandum from Ms. Anderson and to assign each rule action the effective date of July 31, 2021.
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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 119.07, 119.09, 4730.07, 4730.25, 4731.05, 4731.22, 4731.23, 4759.05, 4759.07, 4760.13, 4760.19, 4761.03, 4761.09, 4762.13, 4762.19, 4774.11, 4774.13, 4778.12, 4778.14
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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.07, 119.09, 4731.23
Prior Effective Dates: 06/30/1989, 02/28/2004, 07/31/2016, 09/30/2018
(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 website 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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 119.08, 119.09, 4730.25, 4731.22, 4731.23, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
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 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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

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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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.07, 119.09, 4731.23
Prior Effective Dates: 06/30/1989, 02/28/2004, 09/30/2018
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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.07, 119.09
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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.07, 119.09
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. A request for compliance 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 therefor 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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.09
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 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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.09, 4731.23
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, 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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.07, 119.09, 4731.22, 4731.23
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.
(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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.09, 4731.23
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. The board or its hearing examiner may also utilize the US National Library of Medicine at medlineplus.gov.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05
Rule Amplifies: 119.09
Prior Effective Dates: 02/28/2004
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.
Effective:

Five Year Review (FYR) Dates: 4/12/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.07, 4730.25, 4731.05, 4731.22, 4759.05, 4759.07, 4760.19, 4760.13, 4761.03, 4761.09, 4762.19, 4762.13, 4774.11, 4774.13, 4778.12, 4778.14
Prior Effective Dates: 02/28/2004, 07/31/2016
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.
Replaces: 4759-4-04

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4759.05
Rule Amplifies: 4759.05, 4759.06
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/.
Effective:

Five Year Review (FYR) Dates: 4/9/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4759.05
Rule Amplifies: 4759.05, 4759.06
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.
Replaces: 4759-4-08

Effective:

Five Year Review (FYS) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4759.05
Rule Amplifies: 4759.05, 4759.06, 4759.08
(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.
Effective:

Five Year Review (FYR) Dates: 4/9/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4759.05
Rule Amplifies: 4759.05, 4759.06, 4759.08
Every licensee shall comply with the following standards of professional performance in accordance with the June 1, 2018 "Code of Ethics for the Nutrition and Dietetics Profession" adopted by 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 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, 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 (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, 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 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.
Effective:

Five Year Review (FYR) Dates: 4/9/2021

Certification

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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 X 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 (290-320 nm), narrowband ultraviolet B (311-313 nm), excimer light based (308 nm), ultraviolet A1 (340-400 nm), or UVA (320-400 nm) 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.

(J) "Direct physical oversight" means the physical presence of the supervising physician is required in the same room to directly observe the delegate of the light based medical device.

(K) “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.
Effective:

Five Year Review (FYR) Dates:

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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.
Replaces: 4731-18-02

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05
Rule Amplifies: 4730.07, 4731.05, 4731.22
Prior Effective Dates: 06/30/2000, 05/31/2002
TO BE RESCINDED

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 X 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.
Effective:

Five Year Review (FYR) Dates: 4/9/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.15
Rule Amplifies: 4730.07, 4731.15, 4731.22, 4731.41
Prior Effective Dates: 06/30/2000, 05/31/2002
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; 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 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;

(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.

(f) For cosmetic therapists, the education and training requirements of (a), (b), or (c) may be satisfied through the cosmetic therapy course of instruction in paragraph (B)(5)(b) if the program provides written verification to the physician that the cosmetic therapist completed the requirements of (a), (b), or (c) as part of the cosmetic therapy course of instruction.

(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.
Replaces: 4731-18-03

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05
Rule Amplifies: 4730.07, 4730.21, 4731.25, 4731.05, 4731.22, 4731.41
Prior Effective Dates: 06/30/2000
(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.
Effective:

Five Year Review (FYR) Dates: 4/9/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05
Rule Amplifies: 4730.07, 4731.05, 4731.22, 4731.41
Prior Effective Dates: 06/30/2000
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;

(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; 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.
Replaces: 4731-18-04

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05
Rule Amplifies: 4730.07, 4730.21, 4730.25, 4731.05, 4731.22, 4731.41
Prior Effective Dates: 05/31/2002
TO BE RESCINDED

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.
Effective:

Four Year Review (FYR) Dates: 4/9/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05
Rule Amplifies: 4730.07, 4731.05
Prior Effective Dates: 05/31/2002
June 24, 2021

JOINT COMMITTEE ON AGENCY RULE REVIEW
THE OHIO GENERAL ASSEMBLY
via email JCARR1@JCARR.STATE.OH.US

Re: Proposed Rules 4731-18-01 and 4731-18-03

Dear Committee Members,

On behalf of the American Med Spa Association (AmSpa), allow me to submit the following comments in relation to the current proposed rules for Light Based Procedures under Ohio Administrative Code Chapter 4731-18. We applaud the efforts to address the concerns surrounding unsupervised laser and light-based procedures in medical spas, an increasingly troublesome issue with which our industry is grappling across the country. While the proposal is well-intentioned and has some favorable components, we feel that because of the complexity and breadth of issues involved, the current proposal will ultimately not provide an adequate solution to the problem at hand and will unduly burden compliant practitioners. Therefore, we must oppose the proposed changes in their current form. AmSpa has been working on comprehensive medical spa standards and certification that we believe will fully address the underlying issues, and we request that we work together on creating a more focused solution.

AmSpa is the largest trade group in the medical spa industry. Consisting of more than 3,000 members, with close to 500 in Ohio alone, AmSpa is dedicated to ensuring the non-invasive aesthetic industry is safe and that its practitioners are trained, qualified and compliant. AmSpa’s goal since its founding in 2013 is to ensure the aesthetic industry understands and complies with the myriad health care regulations put in place to ensure the public is protected and, ultimately, rid the industry of unqualified practitioners and unsupervised medicals spas. AmSpa has endeavored to develop and disseminate comprehensive practice standards that will not only address the circumstances contemplated in your current proposed rules, but also ensure that medical spas commit to and comply with minimum standards and requirements widely accepted as safe practices.

Your current efforts fall squarely in AmSpa’s purview and address issues that AmSpa has been tackling for more than six years. No one knows more about the underlying concerns in your proposal than AmSpa. With a database and corresponding legal analysis of medical spa laws in all 50 states, connections with nearly every medical spa in the country, and relationships with industry
executives and key opinion leaders throughout aesthetics, we are well positioned to assist you in leading the country in keeping this fast-growing, exciting industry safe for the public.

The Underlying Issue

Before we address the specific proposals, it is important to understand the underlying problem that this industry faces. The fact is that the overwhelming number of medical spas and aesthetic clinics offer services with very few incidents, side effects or bad outcomes. This is an overwhelmingly safe industry that offers incredibly popular and manifestly safe procedures. But as the industry has grown and become lucrative, we have seen a number of unsupervised medical aesthetic centers, often run by entrepreneurs as opposed to physicians, enter the industry. Often, these businesses try to follow the rules but find it difficult to find the relevant regulations to follow. And because many of the procedures offered in aesthetics are “non-invasive” and require little downtime, some of these businesses operate with limited medical oversight, if any at all. We refer to these businesses as “rogue medical spas,” and they are, unfortunately, the root of most of the problems this industry faces.

In your proposed rules, you accurately identify that laser treatments are often the primary culprit in terms of injury. Many of the problems occur because businesses do not treat laser and energy-based treatments as medical treatments. Instead, because they are easy to operate and, if performed properly, have little risk of complication, they are treated like spa services and offered without medical supervision. This is often done out of ignorance, not malice, but regardless, it is 100% the wrong approach. These are medical facilities offering medical treatment using medical devices. Accordingly, laser, light and energy-based treatments must be treated as medical procedures.

The real problem here is that rogue medical spas don’t treat their services as medical treatments, but rather as a commodity to be sold in order to make a profit. These businesses therefore do not have proper delegation and supervision protocols in place. But the solution here is much more simple than many in this industry assume: We need to explicitly define, through legislation or rulemaking, that these treatments are medical in nature and must be overseen by physicians, not laypeople. Once physicians (or formally delegated mid-levels such as nurse practitioners or physician assistants) take over responsibility for these treatments, they assume responsibility for ensuring they are performed safely by trained and qualified practitioners. This is the same standard as any medical treatment—while treatments may be delegated, it is the duty of the physician to ensure all treatments meet the applicable standard of care.

Comments on Proposed Rules

The proposed rules seek to provide training and supervision requirements for laser and light-based medical procedures. This is a laudable goal overall and one that we support. As written, though, the current proposal will likely not prevent the activity it seeks to stop, and will unduly burden many trained physicians and licensed professionals who are currently operating in a safe and compliant manner.
Definitions

The definitions used for many of the specific light-based procedures are too specific and leave out many common laser and light based treatments. Additionally, the specific definitions will have the effect of preventing the development and innovation of new laser or light-based treatments by Ohio physicians. As an example, section 4731-18-01 (B) defines phototherapy as one of two specific treatments, but it does not allow for the common red and blue LED light treatments often used to treat acne or reduce redness. Additionally, section 4731-18-01 (C) defines “ablative” as excising below the dermo-epidermal junction, and section (D) defines “non-ablative” as not excising below the epidermal surface of the skin. This leaves an undefined gap in the definitions for an intra-epidermal ablative procedure, which may excise a portion of the epidermis but is not expected to excise to the dermo-epidermal junction.

Further 4731-18-01 (I) “Off-site Supervision” includes a reference to a “cosmetic therapist” which is not a currently issued license in Ohio. This definition should be updated to either remove the specific reference or to make it generally applicable to situations where the physician’s physical presence is not required when delegating services under these sections.

Supervision and Delegation

The supervision and delegation requirements found in 4731-18-03 are unduly restrictive and do not follow practices common in the majority of states. An appropriate patient examination is critical to ensuring the high standards necessary to the practice of medicine. However, requiring that the physician personally perform this examination greatly underutilizes Ohio’s highly trained and skilled advanced practitioners, such as physician assistants (PAs) and nurse practitioners (NPs). In most states, these advanced licensees are permitted to perform patient examinations and prescribe treatments when working in a supervisory or collaborative relationship with a physician. If the medical board were to adopt a rule allowing these types of delegations, it would free the physician to focus on more complex and taxing cases and permit the advanced licensees the ability to practice to the level of their training, education and skill, as their counterparts in other states are able to.

Similarly, the requirement for physicians to be on site to supervise is unduly restrictive to their practice and excessive in light of many of the more common low-risk laser and light procedures. For these types of procedures, it is common for the physician to provide supervision while being readily available to respond to complications, but not necessarily on the physical premises. Further, many states permit the physician to delegate the supervision of the procedure to appropriately trained PAs and NPs who are physically on site. The current proposed rule will unnecessarily use up the physician’s time and reduce the total availability of medical care in Ohio.

Additionally section 4731-18-03 (C) appears to provide for substantially more leeway in the supervision of unlicensed persons performing laser hair removal than it does for licensed practical nurses (LPN) and registered nurses (RN). The physician is able to provide off site supervision the
the unlicensed persons but is required to be on site for RNs and LPNs when performing laser hair removal. Ideally, licensed healthcare professionals would be able to work under the same or better conditions as unlicensed persons.

**Ablative and Non-Ablative Procedures**

4731-18-03 as filed in general excludes unlicensed medical assistants from receiving any type of delegation. In excluding trained medical assistants from performing any non-ablative light or energy-based procedures, you have identified a pressing issue that must be addressed, but unfortunately we don’t believe the solution proposed targets the real problem facing the industry. The problem here is not that medical assistants or other unlicensed professionals are unable to safely administer these procedures, but rather that physicians and business owners allow these procedures without proper training, delegation and supervision procedures in place. In other words, the problems herein are not caused by treatments being performed by trained individuals under proper supervision—they are caused by treatments being performed without any supervision at all.

Indeed, nationally we have seen many of these procedures offered safely and effectively when provided by trained health professionals under the supervision of a physician trained in the procedures. Like all other medical procedures, physicians should be able to delegate these procedures to individuals who are skilled, trained and experienced in the procedure. But like other procedures, before this happens the physician must perform a sufficient exam, implement proper protocols and engage in appropriate supervision.

The solution here is to clearly state that all non-ablative laser, light and energy-based aesthetic procedures are *medical procedures*, and that the physician (or mid-level practitioner, as appropriate) must utilize the same standard of care as they would for any medical procedure. By disseminating and implementing this rule, we will place the onus on the physician to prevent these procedures from taking place in unsupervised settings by individuals not trained or qualified to perform them in the first place.

Furthermore, restricting ablative procedures only to physicians does not comport with the practice environment elsewhere in the country. In most states, physicians are permitted to exercise their professional judgment and may delegate these types of procedures to appropriately prepared PAs and NPs, provided there is onsite physician supervision.

With all dermatologic procedures, our recommendation is to adopt a tiered approach where procedures are grouped by risk and chance of complication or injury. Under this approach, only higher level and advanced licensees would be permitted to perform the riskiest procedures, and licensed practical nurses (LPNs) and unlicensed persons would only be permitted to perform the least risky.

**Training and Education**
Proper training and education in light and other energy-based procedures is critical to maintaining high levels of patient care. However, the proposed rules currently are unduly onerous and would make it exceedingly difficult for non-physicians to meet the requirements.

Many devices are multi-mode and able to provide a number of different non-ablative treatments. Additionally, it is extremely common for practices to own multiple types of laser and light devices from multiple manufacturers. Skills and knowledge in a certain procedure can translate across multiple similar devices, and knowledge and skill in one device can translate to use in a number of different settings.

Conclusion

AmSpa welcomes the opportunity to work with all stakeholders in this process. We are glad that the State of Ohio has recognized that laser and light procedures need to be further regulated. However, we cannot support your proposed rules in their current form. We have been researching, training, and educating the industry for more than six years, and we have access to advisors and professionals who have been in the space for more than 20 years. We have been researching, training, and assessing the procedures regularly for many years. By requiring that a physician be involved in the process, it becomes the physician’s responsibility to ensure that the supervising physician is properly trained and supervised in the procedures they are performing.

We agree with the problem. Here is not the lack of training, but rather that these procedures are sometimes performed without any Physician supervision whatsoever. By requiring that a physician be involved in the process, it becomes the physician’s responsibility to ensure that the procedures are performed by a properly trained and supervised professional. We believe that by working together, Ohio will be the leader in this unique, but fast-growing industry, and other states will quickly follow Ohio’s guidance. We look forward to hearing from you on how we can help shape these regulations to ensure that patients are well taken care of and that the industry continues to grow and evolve.


Very truly yours,

Alex R. Thiersch, CEO, AmSpa
On June 28, 2021, a public rules hearing was held regarding the following rules.

**Controlled Substances**

4731-11-11 Standards and procedures for review of “Ohio Automated Rx Reporting System” (OARRS). Proposed to Amend

**Pronouncement of Death**

4731-14-01 Pronouncement of death Proposed to Amend

**Delegation of Medical Tasks**

4731-23-02 Delegation of medical tasks Proposed to Amend

**Sexual Misconduct and Impropriety**

4731-26-01 Definitions Proposed to Amend

4731-26-02 Prohibitions Proposed to Amend

4731-26-03 Violations, miscellaneous Proposed to Amend

At the hearing, two comments were received. First, Janet Winterstein of the Department of Developmental Disabilities recommended the deletion of section (D)(2) of Rule 4731-23-02 to align with the other amendments made to this rule.

Next, Kay Mavko of the Ohio Academy of Nutrition and Dietetics provided a comment that Rule 4731-26-01(A)(4) should be amended to clarify that this rule applies to limited permit holders and licensees.

I recommend making both changes and re-filing the rules with JCARR.

**Requested Motion:** Amend Rule 4731-23-02 to delete section (D)(2) and amend Rule 4731-26-01 to add limited permit holders to paragraph (A)(4).
(A) A physician shall not delegate the performance of a medical task unless that physician has complied with all of the requirements of this chapter of the Administrative Code and the delegation otherwise conforms to minimal standards of care of similar physicians under the same or similar circumstances.

(B) Prior to a physician's delegation of the performance of a medical task, that physician shall determine each of the following:

   (1) That the task is within that physician's authority;

   (2) That the task is indicated for the patient;

   (3) The appropriate level of supervision;

   (4) That no law prohibits the delegation;

   (5) That the person to whom the task will be delegated is competent to perform that task; and,

   (6) That the task itself is one that should be appropriately delegated when considering the following factors:

      (a) That the task can be performed without requiring the exercise of judgment based on medical knowledge;

      (b) That results of the task are reasonably predictable;

      (c) That the task can safely be performed according to exact, unchanging directions;

      (d) That the task can be performed without a need for complex observations or critical decisions;

      (e) That the task can be performed without repeated medical assessments; and,

      (f) That the task, if performed improperly, would not present life threatening consequences or the danger of immediate and serious harm to the patient.
(C) When a physician delegates the administration of drugs, that physician shall provide on-site supervision, except in the following situations:

(1) When the physician has transferred responsibility for the on-site supervision of the unlicensed person who is administering the drug to another physician and that physician has knowingly accepted that responsibility on a patient-by-patient basis; or

(2) In the routine administration of a topical drug, such as a medicated shampoo.

(3) When delegation occurs pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities.

(4) When delegation occurs pursuant to section 5123.42 of the Revised Code.

(5) When written policies and procedures have been adopted for the distribution of drugs by an unlicensed person to individuals incarcerated in state correctional institutions as defined in division (A) of section 2796.01 of the Revised Code, other correctional facilities including county and municipal jails, workhouses, minimum security jails, halfway houses, community residential centers, regional jails and multi-county jails, or any other detention facility as defined in division (F) of section 2921.01 of the Revised Code.

(D) This chapter of the Administrative Code shall not apply if the rules contained herein:

(1) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

(2) Prevent delegation from occurring pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities;

(3) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

(4) Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;
(5) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist.

(E) **Physician delegation is prohibited in all settings specified in section 5123.42 of the Revised Code.**
Definitions.

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

(A) “Licensee” means any of the following:

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

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

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

4. An individual holding a license or limited permit to practice dietetics under Chapter 4759 of the Revised Code;

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

6. An individual holding a license or limited permit to practice respiratory care under Chapter 4761 of the Revised Code.

7. An individual holding a certificate to practice as an acupuncturist or an oriental medicine practitioner under Chapter 4762 of the Revised Code;

8. An individual holding a certificate to practice as a radiologist assistant under Chapter 4774 of the Revised Code; or

9. An individual holding a license to practice as a genetic counselor under Chapter 4778 of the Revised Code.

(B) “Health care services” means examination, consultation, health care, treatment, or other services provided by a licensee under the legal authority conferred by a license, certificate, or registration issued by the board.

(C) “Patient” means a person for whom the licensee has provided health care services, whether provided by mutual consent or implied consent, or provided without consent pursuant to a court order. Once a licensee-patient relationship is established, a person remains a patient until the relationship is terminated. Patient includes any of the following:
(1) A person who is receiving or has received health care services from the licensee without termination of the licensee-patient relationship; or

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

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

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

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

(1) A person for whom the licensee has not rendered health care services since the licensee-patient relationship was terminated; or

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

(G) “Intimate examination” means an examination of the pelvic area, genitals, rectum, breast, or prostate.

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

(1) “Sexual impropriety” means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:

(a) Neglecting to employ disrobing or draping practices respecting the patient’s privacy;
(b) Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient’s consent or in the event such consent has been withdrawn;

(c) Making comments that are not clinically relevant about or to the patient, including but not limited to, making sexual comments about a patient’s body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient’s sexual orientation, or making comments about potential sexual performance;

(d) Soliciting a date or romantic relationship with a patient;

(e) Participation by the licensee in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;

(f) Requesting details of the patient’s sexual history, sexual problems, sexual preferences, or sexual fantasies when not clinically indicated for the type of health care services; and

(g) Failing to offer the patient the opportunity to have a third person or chaperone in the examining room during an intimate examination and/or failing to provide a third person or chaperone in the examining room during an intimate examination upon the request of the patient.

(2) “Sexual contact” includes, but is not limited to, the following:

(a) Touching a breast or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate health care services, or where the patient has refused or has withdrawn consent; and

(b) Examining or touching of the patient’s genitals without the use of gloves.

(3) “Sexual interaction” means conduct between a licensee and patient, whether or not initiated by, consented to, or participated in by a patient, that is sexual or may be reasonably interpreted as sexual, including but not limited to, the following:

(a) Sexual intercourse, genital to genital contact;
(b) Oral to genital contact;

(c) Oral to anal contact, genital to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;

(f) Offering to provide health care services, such as drugs, in exchange for sexual favors; and

(g) Performing an intimate examination without clinical justification.

(h) Conduct that is sexually demeaning to a patient or which demonstrates a lack of respect for the patient’s privacy.

(4) Conduct described in paragraphs (H)(1)(a), (H)(1)(b), (H)(1)(g), and (H)(2)(b) of this rule does not constitute sexual misconduct when all of the following criteria are met:

(a) The conduct occurred during the rendering of health care services in an emergency setting;

(b) The health care services rendered were clinically necessary;

(c) The patient was unconscious or otherwise unable to consent to health care services; and

(d) The patient’s clinical condition required immediate action and the licensee’s violation of the provisions of paragraph (H)(1)(a), (H)(1)(b), (H)(1)(g), or (H)(2)(b) of this rule, as applicable, was due to circumstances not within the licensee’s control.

(I) “Emergency setting” means an emergency department.

(J) “Board” means the state medical board of Ohio.

(K) “Conduct” includes, but is not limited to the following:
(1) Behaviors, gestures, or expressions, whether verbal or physical; or

(2) The creation, receipt, exchange, saving, or sending of images or communications, whether verbal or written, via a telecommunications device.
SUMMARY OF THE JUNE 28, 2021 PUBLIC HEARING REGARDING PROPOSED CHANGES TO THE OHIO ADMINISTRATIVE CODE

Pursuant to Section 119.03, Ohio Revised Code, a public hearing was held on June 28, 2021, to hear comments concerning proposed changes to the administrative rules of the State Medical Board of Ohio (“Board”). R. Gregory Porter, Hearing Examiner, presided.

PURPOSE OF THE HEARING

The following changes are proposed:

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Pronouncement of Death

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Delegation of Medical Tasks

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<td>Prohibitions</td>
<td>Amend</td>
</tr>
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<td>Violations, miscellaneous</td>
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3. Due to the ongoing Covid-19 emergency, the hearing was conducted via videoconferencing software.

TESTIMONY HEARD

Kimberly Anderson, Chief Legal Counsel for the Board

EXHIBITS EXAMINED

Exhibit 1: Copy of the rule originally filed in Package 190267 with JCARR, Secretary of State, and the Legislative Services Commission via the Electronic Rule-Filing System on May 27, 2021 and a copy of the confirmation of filing. Also included is a copy of the confirmation of the revised filing on May 27, 2021.

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1. Kimberly Anderson, Chief Legal Counsel for the Board, identified Exhibits 1 through 9. She further testified with respect to the notice that the Board provided to the public and interested parties regarding the proposed rule changes, and with respect to other procedural matters. (Hearing Transcript at 5-9)

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2. The Board received written comments on behalf of the Ohio Department of Developmental Disabilities from its Health Improvement Policy Specialist, Janet Winterstein, RN. Ms. Winterstein stated, in part:

   The attached draft of 4731-23-02(D) appears to have wording left in that negates the other changes made [previously] in (C) and (E) that remove/prohibit physician delegation in DD settings. It indicates the rules do not apply if they prevent delegation from occurring in some DD Settings (the reference to 5126.36 is services provided by county boards of DD). So, we need that statement struck as well.

(Exhibit 9 at 6)

Ms. Winterstein proposed the following change to proposed amended rule 4731-23-02(D) by deleting subparagraph (D)(2) from the rule:

(D) This chapter of the Administrative Code shall not apply if the rules contained herein:

1. Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

2. Prevent delegation from occurring pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities;

3. Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

4. Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;
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An individual holding a license to practice dietetics under Chapter 4759 of the Revised Code.

(Exhibit 9 at 4) Ms. Mavko further stated:

The definition does not include Limited Permit holders who are also licensed under Chapter 4759.06(G). It is our understanding that individuals holding limited permits are also subject to the purposes of Chapter 4731-26 of the Administrative Code. It appears that the omission was a technical oversight.

(Exhibit 9 at 4) Ms. Mavko requested that the language be changed as follows:

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(Exhibit 9 at 4; Emphasis in original)

Finally, Ms. Mavko stated, “This suggestion would be consistent with the wording at *** (A)(6) for respiratory care licensees and limited permit holders.” (Exhibit 9 at 4)

CONCLUSION

The requirements of Chapter 119, Ohio Revised Code, have been satisfied. The Board may proceed to take action regarding the proposed amendments of Rules 4731-11-11, 4731-14-01, 4731-23-02, 4731-26-01, 4731-26-02, and 4731-26-03.

R. Gregory Porter
Hearing Examiner
A Master Copy would include sealed and proffered exhibits, if any. This original record contains no sealed or proffered exhibits.

- **Report of Hearing**

- **Transcript**
  - Condensed Transcript
  - Full-Page Transcript
  - Word Index

- **Exhibits**

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Exhibit 9: Comments received from Kay Mavko, MS, RDN, LD, Ohio Academy of Nutrition and Dietetics; and Janet Winterstein, Ohio Department of Developmental Disabilities.
SUMMARY OF THE JUNE 28, 2021 PUBLIC HEARING REGARDING PROPOSED CHANGES TO THE OHIO ADMINISTRATIVE CODE

Pursuant to Section 119.03, Ohio Revised Code, a public hearing was held on June 28, 2021, to hear comments concerning proposed changes to the administrative rules of the State Medical Board of Ohio (“Board”). R. Gregory Porter, Hearing Examiner, presided.

PURPOSE OF THE HEARING

The following changes are proposed:

Controlled Substances

<table>
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<td>Standards and procedures for review of “Ohio Automated Rx Reporting System” (OARRS)</td>
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Pronouncement of Death

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Delegation of Medical Tasks

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Dietetics Rules

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<tr>
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<td>Definitions</td>
<td>Amend</td>
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<tr>
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R. Gregory Porter
Hearing Examiner
BEFORE THE MEDICAL BOARD

STATE OF OHIO

PUBLIC RULES HEARING

4731-11-11
4731-14-01
4731-23-02
4731-26-01
4731-26-02
4731-26-03

PROCEEDINGS

before Gregory Porter, Hearing Examiner, for the State Medical Board of Ohio, via Go To Webex, called at 1:30 p.m. on Monday, June 28, 2021.

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio  43215-4620
(614) 224-9481 - (800) 223-9481
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WITNESSES:
Kimberly Anderson
   Examination by the Hearing Examiner

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5 - Package 190266
6 - Package 190271
7 - Notice of Public Hearing
8 - Copies of address portion of emails sent to persons in organizations
9 - Comments Kay Mavco, MS, RDN, LD, Ohio Academy of Nutrition and Dietetics, and Janet Winterstein, Ohio Department of Developmental Disabilities.
Monday Morning Session,
June 28, 2021.

- - -

HEARING EXAMINER: Good afternoon. This public rules hearing for the State Medical Board of Ohio is now in session. Let the record show that this public hearing is convened at 1:30 p.m. on Monday, June 28th, 2021, via Go To Webinar. This public hearing was called pursuant to Section 119.03, Ohio Revised Code.

I'm Greg Porter, Hearing Examiner for the State Medical Board of Ohio. I'm conducting this public rules hearing on behalf of the Board.

The members of the Board will review the report concerning this hearing, including any written materials submitted as evidence, and have the transcript of today's hearing available for review.

The following Rules are proposed: First under the heading Controlled Substances, 4731-11-11, titled Standards and Procedures For Review of Ohio Automated RX Reporting System, otherwise known as OARRS, and that is a proposed amendment.

Second heading is Pronouncement of Death, Rule 4731-14-01, entitled Pronouncement of Death, and that also is proposed to be amended.
Next we have Delegation of Medical Tasks, Rule 4731-23-02, titled Delegation of Medical Tasks, and that's also a proposed amendment.

Under the heading Sexual Misconduct and Impropriety, Rule 4731-26-01, titled Definitions, is a proposed amendment.

Rule 4731-26-02 entitled Prohibitions, is also a proposed amendment. And Rule 4731-26-03 titled Violations, Miscellaneous, is also a proposed amendment.

The purpose of this hearing today is to provide an opportunity for any person affected by the proposed rules to be heard.

Any affected person may present his or her positions, arguments, or contentions orally or in writing, and may present evidence tending to show that the proposed adoption of the rules as proposed will be unreasonable or unlawful.

All persons who wish to testify orally today are asked to raise their hands by clicking the hand icon on their control panel. If you have a written copy of your testimony, submission of the written copy will assist the Board in its review of your comments. Written statements may also be submitted today without testimony.
Please send electronic copies of your comments to my email address, which is Greg.porter@med.ohio.gov, g-o-v. And I'll repeat that address later during this proceeding so you'll hear it again.

I now recognize Kim Anderson, Chief Legal Counsel for the Board, for the presentation of testimony on the Board's compliance with the legal requirements of this matter. And I would call Kim Anderson and ask that the witness be sworn.

(Witness sworn.) Thank you.

Kimberly Anderson, being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By the Hearing Examiner:

Q. Please state your name and how you are employed?

A. I'm Kim Anderson, Chief Legal Counsel, State Medical Board of Ohio.

Q. Are you familiar with the filings and other actions taken for purposes of the Rules being considered today?

A. Yes.

Q. What part did you play in the filing of
the Rules?

    A. I participated in their filing, and the
distribution of the notice of public hearing.
    
    (EXHIBITS MARKED FOR IDENTIFICATION.)

By the Hearing Examiner:

    Q. Can you identify the documents that have
been marked as exhibits, please?
    
    A. Yes. Exhibit 1 is a copy of the Rule
originally filed in Package 190267 with JCARR,
Secretary of State, and the Legislative Services
Commission, via the Electronic Rule Filing System, on
May 27th, 2021, and a copy of the confirmation of
filing. Also included is a copy of the confirmation
of the revised filing on May 27th, 2021.

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(Exhibit marked for identification.)

By the Hearing Examiner:

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481
Q. Was public notice of the rules that are the subject of this hearing given in the Register of Ohio at least 30 days prior to today?

A. Yes. Exhibit 7 is a copy of the Notice of Public Hearing for the Rules and Packages 190267, 190268, 190269, 190270, 190266, 190271, originally filed on May 27th, 2021. Also included is a copy of the revised hearing notice filed on May 27th, 2021.

(EXHIBIT MARKED FOR IDENTIFICATION.)

By the Hearing Officer:

Q. Was notice of the proposed Rules provided to any persons or organizations?

A. Yes. Exhibit 8 contains copies of the address portion of emails sent to persons in organizations pursuant to their standing request to be notified when the Medical Board proposed Rules.

Q. Were any requests for copies of the proposed Rules received in the Board office?

A. No.

(EXHIBIT MARKED FOR IDENTIFICATION.)

By the Hearing Examiner:

Q. Were any written comments on the proposed Rules received in the Board office?

A. Yes. Exhibit 9 are comments received from Kay Mavco, MS, RDN, LD, Ohio Academy of
Q. Okay. Thank you very much.

HEARING EXAMINER: Exhibits 1 through 9 are admitted into the record. Thank you, Ms. Anderson.

(EXHIBITS ADMITTED INTO EVIDENCE.)

HEARING EXAMINER: Okay. It is now time to receive testimony on the proposed Rules from interested parties. Please remember that the purpose of this hearing is to receive ideas, comments, and concerns regarding the proposed Rules. It is not the appropriate time to seek debate on those proposed Rules. However, the Board reserves the right to limit the testimony of any witness if the testimony appears to be irrelevant or cumulative.

If a witness has a written copy of his or her testimony, or other documents that you wish to have marked as exhibits, the documents should be mailed to me at greg.porter -- that's G-r-e-g.p-o-r-t-e-r@med.ohio.gov, at the conclusion of your testimony.

If you have a written statement you wish to submit without giving testimony, please email the written statement also to my email address so that it
can be marked as an exhibit.

Okay. You all have -- should be able to see a little hand icon in your control panel. If anyone wishes to testify, please click on that hand icon now. Okay. Not seeing any raised hands. Give it a little time here. No.

Okay. There are no witnesses who wish to testify at this time. So in conclusion, the record will be held open until 5:00 p.m. today for the sole purpose of receiving any additional written comments on the proposed Rules.

Please send them to my email address. Again, that's greg.porter@med.ohio.gov. I thank you all for attending this public hearing.

The Board will weigh the testimony and evidence presented today before considering action on the proposed Rules. Any future action by the Board on these proposed Rules will take place at a regular monthly meeting of the Board, which is open to the public.

Any formal action by the Board will comply with Chapter 119 of the Ohio Revised Code. And this public hearing is concluded at 1:42 p.m.

Thank you all very much.

(Thereupon, the hearing adjourned at 1:42 p.m.)
CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Monday, June 28, 2021,
and carefully compared with my original stenographic
notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2021.
WORD INDEX
EXHIBITS
Standards and procedures for review of "Ohio Automated Rx Reporting System" (OARRS).

(A) For purposes of this rule:

1. "Delegate" means an authorized representative who is registered with the Ohio board of pharmacy to obtain an OARRS report on behalf of a physician;

2. "OARRS" means the "Ohio Automated Rx Reporting System" drug database established and maintained pursuant to section 4729.75 of the Revised Code.

3. "OARRS report" means a report of information related to a specified patient generated by the drug database established and maintained pursuant to section 4729.75 of the Revised Code.

4. "Personally furnish" means the distribution of drugs by a prescriber to the prescriber's patients for use outside the prescriber's practice setting.

5. "Reported drugs" means all the drugs listed in rule 4729-37-02\(\text{4729:8-2-01}\) of the Administrative Code that are required to be reported to the drug database established and maintained pursuant to section 4729.75 of the Revised Code, including controlled substances in schedules II, III, IV, and V.

(B) Standards of care:

1. The accepted and prevailing minimal standards of care require that when prescribing or personally furnishing a reported drug, a physician shall take into account all of the following:

   a. The potential for abuse of the reported drug;

   b. The possibility that use of the reported drug may lead to dependence;

   c. The possibility the patient will obtain the reported drug for a nontherapeutic use or distribute it to other persons; and

   d. The potential existence of an illicit market for the reported drug.

2. In considering whether a prescription for or the personally furnishing of a reported drug is appropriate for the patient, the physician shall use sound clinical judgment and obtain and review an OARRS report consistent with the provisions of this rule.

Exhibit 1
(C) A physician shall obtain and review an OARRS report to help determine if it is appropriate to prescribe or personally furnish an opioid analgesic, benzodiazepine, or reported drug to a patient as provided in this paragraph and paragraph (F) of this rule:

(1) A physician shall obtain and review an OARRS report before prescribing or personally furnishing an opiate analgesic or benzodiazepine to a patient, unless an exception listed in paragraph (G) of this rule is applicable.

(2) A physician shall obtain and review an OARRS report when a patient's course of treatment with a reported drug other than an opioid analgesic or benzodiazepine has lasted more than ninety days, unless an exception listed in paragraph (G) of this rule is applicable.

(3) A physician shall obtain and review an OARRS report when any of the following red flags pertain to the patient:

(a) Selling prescription drugs;

(b) Forging or altering a prescription;

(c) Stealing or borrowing reported drugs;

(d) Increasing the dosage of reported drugs in amounts that exceed the prescribed amount;

(e) Suffering an overdose, intentional or unintentional;

(f) Having a drug screen result that is inconsistent with the treatment plan or refusing to participate in a drug screen;

(g) Having been arrested, convicted, or received diversion or intervention in lieu of conviction for a drug related offense while under the physician's care;

(h) Receiving reported drugs from multiple prescribers, without clinical basis;

(i) Traveling with a group of other patients to the physician's office where all or most of the patients request controlled substance prescriptions;

(j) Traveling an extended distance or from out of state to the physician's office;

(k) Having a family member, friend, law enforcement officer, or health care professional express concern related to the patient's use of illegal or reported drugs;
(l) A known history of chemical abuse or dependency;

(m) Appearing impaired or overly sedated during an office visit or exam;

(n) Requesting reported drugs by street name, color, or identifying marks;

(o) Frequently requesting early refills of reported drugs;

(p) Frequently losing prescriptions for reported drugs;

(q) A history of illegal drug use;

(r) Sharing reported drugs with another person; or

(s) Recurring visits to non-coordinated sites of care, such as emergency departments, urgent care facilities, or walk-in clinics to obtain reported drugs.

(D) A physician who decides to utilize an opioid analgesic, benzodiazepine, or other reported drug in any of the circumstances within paragraphs (C)(2) and (C)(3) of this rule, shall take the following steps prior to issuing a prescription for or personally furnishing the opioid analgesic, benzodiazepine, or other reported drug:

(1) Review and document in the patient record the reasons why the physician believes or has reason to believe that the patient may be abusing or diverting drugs;

(2) Review and document in the patient's record the patient's progress toward treatment objectives over the course of treatment;

(3) Review and document in the patient record the functional status of the patient, including activities for daily living, adverse effects, analgesia, and aberrant behavior over the course of treatment;

(4) Consider using a patient treatment agreement including more frequent and periodic reviews of OARRS reports and that may also include more frequent office visits, different treatment options, drug screens, use of one pharmacy, use of one provider for the prescription or personally furnishing of reported drugs, and consequences for non-compliance with the terms of the agreement. The patient treatment agreement shall be maintained as part of the patient record; and

(5) Consider consulting with or referring the patient to a substance abuse specialist.

(E) Frequency for follow-up OARRS reports:
(1) For a patient whose treatment with an opioid analgesic or benzodiazepine lasts more than ninety days, a physician shall obtain and review an OARRS report for the patient at least every ninety days during the course of treatment, unless an exception listed in paragraph (G) of this rule is applicable.

(2) For a patient who is treated with a reported drug other than an opioid analgesic or benzodiazepine for a period lasting more than ninety days, the physician shall obtain and review an OARRS report for the patient at least annually following the initial OARRS report obtained and reviewed pursuant to paragraph (C)(2) of this rule until the course of treatment utilizing the reported drug has ended, unless an exception in paragraph (G) of this rule is applicable.

(F) When a physician or their delegate requests an OARRS report in compliance with this rule, a physician shall document receipt and review of the OARRS report in the patient record, as follows:

(1) Initial reports requested shall cover at least the twelve months immediately preceding the date of the request:

(2) Subsequent reports requested shall, at a minimum, cover the period from the date of the last report to present;

(3) If the physician practices primarily in a county of this state that adjoins another state, the physician or their delegate shall also request a report of any information available in the drug database that pertains to prescriptions issued or drugs furnished to the patient in the state adjoining that county; and

(4) If an OARRS report regarding the patient is not available, the physician shall document in the patient’s record the reason that the report is not available and any efforts made in follow-up to obtain the requested information.

(G) A physician shall not be required to review and assess an OARRS report when prescribing or personally furnishing an opioid analgesic, benzodiazepine, or other reported drug under the following circumstances, unless a physician believes or has reason to believe that a patient may be abusing or diverting reported drugs:

(1) The reported drug is prescribed or personally furnished to a hospice patient in a hospice care program as those terms are defined in section 3712.01 of the Revised Code, or any other patient diagnosed as terminally ill;

(2) The reported drug is prescribed for administration in a hospital, nursing home, or residential care facility;
(3) The reported drug is prescribed or personally furnished in an amount indicated for a period not to exceed seven days;

(4) The reported drug is prescribed or personally furnished for the treatment of cancer or another condition associated with cancer; and

(5) The reported drug is prescribed or personally furnished to treat acute pain resulting from a surgical or other invasive procedure or a delivery.
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05, 4731.055
Rule Amplifies: 4731.055
Prior Effective Dates: 11/30/2011, 12/31/2015
It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

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(A) Only an individual holding one of the following current certificates or licenses may pronounce a person dead:

1. A certificate to practice medicine and surgery or osteopathic medicine and surgery issued under section 4731.14 or 4731.29 of the Revised Code;

2. A training certificate issued under section 4731.291 of the Revised Code;

3. A clinical research faculty certificate issued under section 4731.293 of the Revised Code;

4. A special activities certificate issued under section 4731.294 of the Revised Code;

5. A certificate of authority license to practice as a certified nurse practitioner or clinical nurse specialist issued under section 4723.42 of the Revised Code, when the holder acts in compliance with section 4723.36 of the Revised Code;

6. A license to practice as a registered nurse issued under section 4723.09 of the Revised Code, when the holder acts in compliance with section 4723.36 of the Revised Code.

7. A license to practice as a physician assistant issued under section 4730.12 of the Revised Code, when the holder acts in compliance with section 4730.202 of the Revised Code;

8. A certificate of conceded eminence issued under section 4731.297 of the Revised Code;

9. A certificate to practice podiatric medicine and surgery issued under section 4731.56, 4731.57, or 4731.571 of the Revised Code.

(B) A physician holding a current certificate to practice medicine or surgery or osteopathic medicine and surgery issued under section 4731.14 or 4731.29 of the Revised Code may pronounce a person dead without personally examining the body of the deceased only if a competent observer has recited the facts of the deceased’s present medical condition to the physician and the physician is satisfied that death has occurred.

(C) For purposes of this rule a competent observer shall mean one of the following:

1. A licensed practical nurse holding a current license issued under Chapter 4723. of the Revised Code;

**Exhibit 2**
(2) An EMT-Basic holding a current certificate issued under section 4765.30 of the Revised Code;

(3) An EMT-intermediate holding a current certificate issued under section 4765.30 of the Revised Code;

(4) A EMT-paramedic holding a current certificate issued under section 4765.30 of the Revised Code;

(5) A chiropractor holding a current certificate issued under Chapter 4734. of the Revised Code;

(6) An individual authorized to pronounce a person dead under paragraph (A) of this rule;

(7) A coroner's investigator as referenced in section 313.05 of the Revised Code.
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05, 4731.053
Rule Amplifies: 4723.36, 4730.202, 4731.053, 4731.291, 4731.293, 4731.294, 4731.297, 4731.34, 4731.51
It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

- **Package Number:** 190268
- **File Date and Time:** 05/27/2021 12:32 PM
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(A) A physician shall not delegate the performance of a medical task unless that physician has complied with all of the requirements of this chapter of the Administrative Code and the delegation otherwise conforms to minimal standards of care of similar physicians under the same or similar circumstances.

(B) Prior to a physician's delegation of the performance of a medical task, that physician shall determine each of the following:

(1) That the task is within that physician's authority;

(2) That the task is indicated for the patient;

(3) The appropriate level of supervision;

(4) That no law prohibits the delegation;

(5) That the person to whom the task will be delegated is competent to perform that task; and,

(6) That the task itself is one that should be appropriately delegated when considering the following factors:

(a) That the task can be performed without requiring the exercise of judgment based on medical knowledge;

(b) That results of the task are reasonably predictable;

(c) That the task can safely be performed according to exact, unchanging directions;

(d) That the task can be performed without a need for complex observations or critical decisions;

(e) That the task can be performed without repeated medical assessments; and,

(f) That the task, if performed improperly, would not present life threatening consequences or the danger of immediate and serious harm to the patient.

(C) When a physician delegates the administration of drugs, that physician shall provide on-site supervision, except in the following situations:

(1) When the physician has transferred responsibility for the on-site supervision of the unlicensed person who is administering the drug to another physician and that

Exhibit 3
physician has knowingly accepted that responsibility on a patient-by-patient basis; or

(2) In the routine administration of a topical drug, such as a medicated shampoo.

(3) When delegation occurs pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities.

(4) When delegation occurs pursuant to section 5123.42 of the Revised Code.

(5) When written policies and procedures have been adopted for the distribution of drugs by an unlicensed person to individuals incarcerated in state correctional institutions as defined in division (A) of section 2796.01 of the Revised Code, other correctional facilities including county and municipal jails, workhouses, minimum security jails, halfway houses, community residential centers, regional jails and multi-county jails, or any other detention facility as defined in division (F) of section 2921.01 of the Revised Code.

(D) This chapter of the Administrative Code shall not apply if the rules contained herein:

(1) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

(2) Prevent delegation from occurring pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities;

(3) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

(4) Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;

(5) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist.

(E) Physician delegation is prohibited in all settings specified in section 5123.42 of the Revised Code.
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4731.05, 4731.053
Rule Amplifies: 4731.22, 4731.053, 4731.34
It is hereby confirmed that the State Medical Board **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 190269  
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Definitions.

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

(A) “Licensee” means any of the following:

1. An individual holding a certificate to practice as a physician assistant under Chapter 4730 of the Revised Code;
2. An individual holding a certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under Chapter 4731 of the Revised Code;
3. An individual holding a certificate to practice a limited branch of medicine under Chapter 4731 of the Revised Code;
4. An individual holding a license to practice dietetics under Chapter 4759 of the Revised Code;
5. An individual holding a certificate of registration as an anesthesiologist assistant under Chapter 4760 of the Revised Code;
6. An individual holding a license or limited permit to practice respiratory care under Chapter 4761 of the Revised Code;
7. An individual holding a certificate to practice as an acupuncturist or an oriental medicine practitioner under Chapter 4762 of the Revised Code;
8. An individual holding a certificate to practice as a radiologist assistant under Chapter 4774 of the Revised Code; or
9. An individual holding a license to practice as a genetic counselor under Chapter 4778 of the Revised Code.

(B) “Health care services” means examination, consultation, health care, treatment, or other services provided by a licensee under the legal authority conferred by a license, certificate, or registration issued by the board.

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

Exhibit 4
(1) A person who is receiving or has received health care services from the licensee without termination of the licensee-patient relationship; or

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

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

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

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

(1) A person for whom the licensee has not rendered health care services since the licensee-patient relationship was terminated; or

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

(G) “Intimate examination” means an examination of the pelvic area, genitals, rectum, breast, or prostate.

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

(1) “Sexual impropriety” means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:

(a) Neglecting to employ disrobing or draping practices respecting the patient’s privacy;
(b) Subjecting a patient to an intimate examination in the presence of a third
party, other than a chaperone, without the patient’s consent or in the event
such consent has been withdrawn;

(c) Making comments that are not clinically relevant about or to the patient,
including but not limited to, making sexual comments about a patient’s
body or underclothing, making sexualized or sexually demeaning
comments to a patient, criticizing the patient’s sexual orientation, or
making comments about potential sexual performance;

(d) Soliciting a date or romantic relationship with a patient;

(e) Participation by the licensee in conversation regarding the sexual problems,
sexual preferences, or sexual fantasies of the licensee;

(f) Requesting details of the patient’s sexual history, sexual problems, sexual
preferences, or sexual fantasies when not clinically indicated for the type
of health care services; and

(g) Failing to offer the patient the opportunity to have a third person or
chaperone in the examining room during an intimate examination and/
or failing to provide a third person or chaperone in the examining room
during an intimate examination upon the request of the patient.

(2) “Sexual contact” includes, but is not limited to, the following:

(a) Touching a breast or any body part that has sexual connotation for the
licensee or patient, for any purpose other than appropriate health care
services, or where the patient has refused or has withdrawn consent; and

(b) Examining or touching of the patient’s genitals without the use of gloves.

(3) “Sexual interaction” means conduct between a licensee and patient, whether or not
initiated by, consented to, or participated in by a patient, that is sexual or may
be reasonably interpreted as sexual, including but not limited to, the following:

(a) Sexual intercourse, genital to genital contact;

(b) Oral to genital contact;

(c) Oral to anal contact, genital to anal contact;

(d) Kissing in a romantic or sexual manner;
(e) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;

(f) Offering to provide health care services, such as drugs, in exchange for sexual favors; and

(g) Performing an intimate examination without clinical justification.

(h) Conduct that is sexually demeaning to a patient or which demonstrates a lack of respect for the patient’s privacy.

(4) Conduct described in paragraphs (H)(1)(a), (H)(1)(b), (H)(1)(g), and (H)(2)(b) of this rule does not constitute sexual misconduct when all of the following criteria are met:

(a) The conduct occurred during the rendering of health care services in an emergency setting;

(b) The health care services rendered were clinically necessary;

(c) The patient was unconscious or otherwise unable to consent to health care services; and

(d) The patient’s clinical condition required immediate action and the licensee’s violation of the provisions of paragraph (H)(1)(a), (H)(1)(b), (H)(1)(g), or (H)(2)(b) of this rule, as applicable, was due to circumstances not within the licensee’s control.

(I) “Emergency setting” means an emergency department.

(J) “Board” means the state medical board of Ohio.

(K) “Conduct” includes, but is not limited to the following:

(1) Behaviors, gestures, or expressions, whether verbal or physical; or

(2) The creation, receipt, exchange, saving, or sending of images or communications, whether verbal or written, via a telecommunications device.
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.25, 4731.22, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
4731-26-03 Violations, miscellaneous.

(A) Except as provided in paragraph (C) of this rule, a violation of rule 4731-26-02 of the Administrative Code, as determined by the board, shall constitute the following:

(1) For a physician, or massage therapist, or cosmetic therapist, “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(2) For a physician assistant, “a departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established, as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.

(3) For a dietitian, "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.

(4) For an anesthesiologist assistant, “a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established,” as that clause is used in division (B)(4) of section 4760.13 of the Revised Code.

(5) For a respiratory care professional or limited permit holder, “a departure from, or a failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to the patient is established”, as that clause is used in division (A)(10) of section 4761.09 of the Revised Code.

(6) For an acupuncturist or oriental medicine practitioner, a “departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established,” as that clause is used in division (B)(4) of section 4762.13 of the Revised Code.

(7) For a radiologist assistant, a “departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established,” as that clause is used in division (B)(4) of section 4774.13 of the Revised Code.
(6)(8) For a genetic counselor, a "departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established," as that clause is used in division (B)(4) of section 4778.14 of the Revised Code.

(B) Where the alleged conduct does not in itself constitute sexual misconduct, as defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, the board may consider expert testimony or other evidence in making its determination as to whether the conduct of the licensee constitutes sexual misconduct.

(C) Nothing in this rule shall limit the board’s authority to investigate and take action under section 4730.25, 4731.22, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13 or 4778.14 of the Revised Code.
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.25, 4731.22, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
It is hereby confirmed that the State Medical Board original filed the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

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</table>
Prohibitions.

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

(A) A licensee shall not engage in sexual misconduct with a patient or key third party, as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.

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

1. The conduct occurred within ninety days after the licensee-patient relationship was terminated;

2. The conduct occurred between a psychiatrist and a person to whom the psychiatrist formerly provided psychiatric or mental health services, and the conduct is in violation of the code of ethics of the “American Psychiatric Association”; or

3. The board determines that the conduct constitutes sexual misconduct upon consideration of the following factors:

   a. The duration of the licensee-patient relationship;

   b. The nature of the health care services provided;

   c. The lapse of time since the licensee-patient relationship ended;

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

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

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

Exhibit 5
Five Year Review (FYR) Dates: 5/27/2021

WITHDRAWN ELECTRONICALLY

Certification

05/27/2021

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.25, 4731.22, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
The State Medical Board hereby submits the following rule(s) for five year review. The agency has reviewed the rule(s) pursuant to 106.03 and have determined that **no change** is necessary.

**Package Number:** 190266  
**File Date and Time:** 05/27/2021 12:32 PM  
**Confirmation Number:** 5f10c0ada0a4e41a160199a40acf6b0

### NO CHANGE

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It is hereby confirmed that the State Medical Board has withdrawn the no-change filing of the following rule(s).

Package Number: 190266  
File Date and Time: 05/27/2021 2:41 PM  
Confirmation Number: 5f10c0ada0a4e41a160199a40acf6b0

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   (a) The duration of the licensee-patient relationship;
   (b) The nature of the health care services provided;
   (c) The lapse of time since the licensee-patient relationship ended;
   (d) The extent to which the former patient confided personal or private information to the licensee;
   (e) The degree of emotional dependence that the former patient has or had on the licensee; and
   (f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous licensee-patient relationship.

Exhibit 6
Effective:

Five Year Review (FYR) Dates: 5/27/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12
Rule Amplifies: 4730.25, 4731.22, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14
It is hereby confirmed that the State Medical Board original filed the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 190271  
File Date and Time: 05/27/2021 3:44 PM  
Confirmation Number: ee5a8662d87e35587d16cb9fd1736f26

**ORIGINAL FILE**

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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, June 28, 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:

Controlled Substances
4731-11-11 Standards and procedures for review of “Ohio Automated Rx Reporting System” (OARRS). Proposed to Amend

Pronouncement of Death
4731-14-01 Pronouncement of death Proposed to Amend

Delegation of Medical Tasks
4731-23-02 Delegation of medical tasks Proposed to Amend

Sexual Misconduct and Impropriety
4731-26-01 Definitions Proposed to Amend
4731-26-03 Violations, miscellaneous Proposed to Amend

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](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](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. Persons providing oral testimony are encouraged to also submit a copy of the testimony to Kimberly Anderson 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 June 28, 2021.

- via e-mail to: 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/3077706084578061326

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

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Once registered, parties will receive an email with a link that will connect them to the hearing.
Please find attached the notice for a rules hearing on June 28, 2021 and the associated rules.

Judy Rodriguez
Public Services Manager
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-4999
w: med.ohio.gov

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Exhibit 8
From: Judy Rodriguez  
Public Services Manager  
State Medical Board of Ohio  
30 East Broad Street, 3rd Floor  
Columbus, Ohio 43215  
o: 614-466-4999  
w: med.ohio.gov

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From: Rodriguez, Judith  
Sent: Friday, May 28, 2021 10:27 AM  
To: A DiPasquale <ADiPasquale@nursing.ohio.gov>; Barry T. Doyle (todoyle@aol.com)
Please find attached the notice for a rules hearing on June 28, 2021 and the associated rules.

Judy Rodriguez
Public Services Manager

State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-4999
w: med.ohio.gov

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Kay-

Thanks very much for following up. We do intend to include limited permit holders, so I will include your comments for the public hearing and will recommend to the Board that this change is made.

Kim

Kimberly Anderson
Chief Legal Counsel
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
o: 614-466-7207
c: 614-230-9077
Kimberly.Anderson@med.ohio.gov

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I hope you enjoyed a nice long weekend.

Please note that I am forwarding comments and an e-mail that I thought I sent to you back in February when we were given the opportunity to review the rule package containing rules on Controlled Substances, Pronouncement of Death, Delegation of Medical Tasks and Sexual Misconduct and Impropriety.

I don’t think my comments got to you ....because I now see that I addressed them incorrectly, and today when I looked for an acknowledgment I found none from you in that time frame. (You usually are soo good about acknowledging submitted comments).

Anyway .... I see the same error that I intended to point out back in February is still in the rule package for the proposed June 28 hearing.

I am bringing this to your attention now so that if you agree that the error needs to be corrected and can make the change without disrupting your filing process prior to the hearing - it might help out.

Please let me know what you think. I apologize for my mis-emailing and lack of follow-up.

Kay Mavko, MS, RDN, LD
State Regulatory Specialist
Ohio Academy of Nutrition and Dietetics

From: Kay Mavko <kmavko@columbus.rr.com>
Sent: Tuesday, February 9, 2021 8:30 PM
To: Kimberley.anderson@med.ohio.gov
Cc: mcknightp@aol.com
Subject: OAND Comments on draft rules

Kimberly Anderson,

Attached please find comments submitted on behalf of the Ohio Academy of Nutrition and Dietetics regarding rules being considered for revision by the State Medical Board of Ohio.

Thank you for the opportunity to review the rules and make comments.

Please contact me if you have questions about our comments or need information.

Kay Mavko, MS, RDN,LD
State Regulatory Specialist
Ohio Academy of Nutrition and Dietetics
CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.
Thank you for the opportunity to review the rules being considered for revision by the State Medical Board of Ohio including:

4731-11-08 Utilizing Controlled Substances for Self & Family - no change
4731-14-01 Pronouncement of Death – amend to update statutory references
4731-23-01 Delegation of Medical Tasks; Definitions - no change
4731-23-02 Delegation of Medical Tasks – amend to reflect changes in DODD statutes
4731-23-03 Delegation of Medical Tasks; Prohibitions - no change
4731-23-04 Violations - no change
4731-26-01 Sexual Misconduct and Impropriety; Definitions – amend to update language; adds dietitians and respiratory care professionals; make changes needed for HB 442.
4731-26-02 Prohibitions – no change
4731-26-03 Violations; miscellaneous– amend to update language, adds dietitians and respiratory care professionals; make changes needed for HB 442.
4730-2-07 Standards for Prescribing– amend to add 4731-35 for physician assistants.
4731-35-01 Consult Agreements – amend to add physician assistants as practitioner
4731-35-02 Standards for Managing Drug Therapy– amend to add physician assistants as Practitioner

The Ohio Academy of Nutrition and Dietetics finds the rules to be acceptable as drafted except for the following:

4731-26-01 Definitions specifies:

(A) “Licensee” means any of the following:

*** (4) An individual holding a license to practice dietetics under Chapter 4759 of the Revised Code

The definition does not include Limited Permit holders who are also licensed under Chapter 4759.06(G). It is our understanding that individuals holding limited permits are also subject to the purposes of Chapter 4731-26 of the Administrative Code. It appears that the omission was a technical oversight.

OAND respectfully requests that the text be changed to read:

*** (4) An individual holding a license or limited permit to practice dietetics under Chapter 4759 of the Revised Code.

(This suggestion would be consistent with the wording at *** (A)(6) for respiratory care licensees and limited permit holders.)

Thank you for the opportunity to comment on the draft rules.

Kay Mavko, MS, RDN, LD
State Regulatory Specialist
Ohio Academy of Nutrition and Dietetics
Judy-

For the 6-28-21 rules hearing.

Kimberly Anderson  
Chief Legal Counsel  
State Medical Board of Ohio  
30 East Broad Street, 3rd Floor  
Columbus, Ohio 43215  
o: 614-466-7207  
c: 614-230-9077  
Kimberly.Anderson@med.ohio.gov

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Thank you for your call back regarding the proposed physician delegation rules. Per your request here is the clarification needed (in green).

The attached draft of 4731-23-02 (D) appears to have wording left in that negates the other changes made (in (C) and (E) that remove/prohibit physician delegation in DD settings. It indicates the rules do not apply if they prevent delegation from occurring in some DD Settings (the reference to 5126.36 is services provided by county boards of DD). So, we need that statement struck as well.

Please let me know if this request is not clear.

Thanks so much!

Janet Winterstein, RN
Health Improvement Policy Specialist
Ohio Department of Developmental Disabilities
Phone 440-714-5372 | janet.winterstein@dodd.ohio.gov

DODD Helpline 800-617-6733
Medication Administration Certifications and Classes can be found on DODD.ohio.gov > click at bottom of DODD home page on > Medication Administration > in right hand column find verification and classes links

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Hi,

I wanted to run this situation by you before moving forward.

History:
Circa 2003 when DODD was getting rules to allow for Medication Certification (rather than all med admin requiring delegation) the rules for **physician** delegation were modified so that physician delegation was not an option in DD settings. It was feared that physician delegation would be used as a work-around to avoid having to have DD Personnel get medication certification by just having physicians say that DSP could administer medications.

That stood until apparently 2016 when - unknow to us (DODD) - the rule was revised and apparently physician delegation in DD settings was put back in the rule. I do not believe this is known by the field at-large since it was prohibited for so long it is still believed to be the case.

This past Dec./Jan. Kim Anderson at the medical board contacted Vickie and asked for DODD input to the rule review. Through Vickie, DODD asked that adjustments be made to prohibit physician delegation in DD settings.

You can see these changes in the attached draft. (for your convenience 5126.36 noted withing is allowing Medication Administration using DODD rules to happen as part of services provided by county boards [https://codes.ohio.gov/ohio-revised-code/section-5126.36](https://codes.ohio.gov/ohio-revised-code/section-5126.36))

4731-23-02

(1) When the physician has transferred responsibility for the on-site supervision of the unlicensed person who is administering the drug to another physician and that physician has knowingly accepted that responsibility on a patient-by-patient basis; or

(2) In the routine administration of a topical drug, such as a medicated shampoo.

(3) When delegation occurs pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities.

(4) When delegation occurs pursuant to section 5123.42 of the Revised Code.

(5) When written policies and procedures have been adopted for the distribution.....

And

(E) Physician delegation is prohibited in all settings specified in section 5123.42 of the
Revised Code.

When the medical board sent Vicki the draft and she sent to me and Linda we thought this covered the issue – no problems noted.

Recently Vicki sent us the notice of public hearing on these rules, and I noted something I hadn’t noted before. There is this funky paragraph that would seem to negate the negations that were added, and we should have probably asked this to be removed when given the first opportunities.

(D) This chapter of the Administrative Code shall not apply if the rules contained herein:
(1) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;
(2) Prevent delegation from occurring pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities;

As you can see in the thread below Vicki has instructed me to “to mention it to them or draft the comments for DODD to submit.”

My preference would be to not make a public comment but to reach out to them personally or have Jeremiah reach out personally. It does not seem to me that one state agency making a public comment about another state agency’s rule proposals (especially when we had already been given and opportunity to comment privately).

Your guidance would be appreciated as to how I proceed. I’ve attached full text of the rule proposal for your review.

Thanks,

Janet Winterstein, RN
Health Improvement Policy Specialist
Ohio Department of Developmental Disabilities
Phone 440-714-5372 | janet.winterstein@dodd.ohio.gov

DODD Helpline 800-617-6733
Medication Administration Certifications and Classes can be found on DODD.ohio.gov > click at bottom of DODD home page on> Medication Administration > in right hand column find verification and classes links

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I am saying that if you have a question/comment as to why the reference to physician delegation for county boards remains in the rule, you (DODD) need to mention it to them or draft the comments for DODD to submit.

Thanks Vicki,

So I am assuming your response means you do think it is a conflict in the wording?

Shall I speak to Jeremiah to see if we have a back door rather than going to the public hearing. It seems like a courtesy from one public agency to another to not bring it up at a public hearing.
I believe it is up to you as they may missed it. If we removed physician delegation from the system, then it make sense that the rule’s reference to it in county board settings should also go. Some of the smaller boards have a campus like setting where the board’s office, the ICF and day program are located there. —such as Deepwood Center in Lake County (I know this from my hearing that ended today).

Hi Vicki,

Yes, I understand. I’m wondering if you agree that the rule appears to contract itself? If yes, I apologize for not catching that in previous readings. I’m not sure we need to invest any particular effort in it if the ship has already sailed.

1 - Most people do not know it even exists
2 - County Boards are not supposed to be providing services
3 - If the Medical Board and LSC did not read it as contradicting itself I don’t feel a great obligation to tackle the issue.

Sorry to take up so much of your time today.
Thanks

Janet Winterstein, RN
Health Improvement Policy Specialist
Ohio Department of Developmental Disabilities
Phone 440-714-5372 | janet.winterstein@dodd.ohio.gov

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are not the intended recipient, please contact the sender by reply email and destroy all copies of the
original message.

From: Jenkins, Vicki <Vicki.Jenkins@dodd.ohio.gov>
Sent: Friday, May 28, 2021 2:14 PM
To: Winterstein, Janet <janet.winterstein@dodd.ohio.gov>
Cc: Donchess, Linda <Linda.Donchess@dodd.ohio.gov>
Subject: RE: Initial Review of Rules - Medical Board

I believe Kim Anderson has me add to their distribution list so the DODD is aware of proposed
changes. When I receive their rules, I am forwarding them to you and Linda for review as this is your
area of expertise.

If we need to provide public comment, I believe we can do so (we may need to check with Jeremiah
to see if it needs to go through him).

From: Winterstein, Janet <janet.winterstein@dodd.ohio.gov>
Sent: Friday, May 28, 2021 1:06 PM
To: Jenkins, Vicki <Vicki.Jenkins@dodd.ohio.gov>
Cc: Donchess, Linda <Linda.Donchess@dodd.ohio.gov>
Subject: FW: Initial Review of Rules - Medical Board

Here is the draft you sent us. It does take out the references to DD that we asked for. Apparently,
the further reference I found today we did not catch when we asked for DD references to be
removed. And it does include the line about prohibiting in any setting referenced in 5123.42.

It seems that neither they nor we realized that they left in the line about county boards that is still in
current draft.

Thanks
Janet Winterstein, RN
Health Improvement Policy Specialist
Ohio Department of Developmental Disabilities
Phone 440-714-5372 | janet.winterstein@dodd.ohio.gov

DODD Helpline 800-617-6733
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From: Jenkins, Vicki <Vicki.Jenkins@dodd.ohio.gov>
Sent: Monday, February 1, 2021 6:16 PM
To: Donchess, Linda <Linda.Donchess@dodd.ohio.gov>; Winterstein, Janet <janet.winterstein@dodd.ohio.gov>
Subject: FW: Initial Review of Rules - Medical Board

Please see the proposed amendment to 4731-23-02 Delegation of Medical Tasks. Let me know if I need to talk with Kim Anderson of the Medical Board. Thank you.

From: Rodriguez, Judith <Judith.Rodriguez@med.ohio.gov>
Sent: Monday, January 25, 2021 4:08 PM
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000012
PROPOSED RULES: Seeking comments on the Medical Board's initial review of rules

The State Medical Board of Ohio seeks public input on proposed rules several times during the rule-making process. Public input is sought after the Medical Board has conducted its initial review of rules, after rules are filed with the Common Sense Initiative Office, and at the public hearing that occurs after the rules are formally filed with the Joint Committee on Agency Rule Review.

The Medical Board’s initial review of rules may result in a proposal to amend current rules, rescind current rules, make no changes to current rules, and/or adopt new rules. Comments received will be reviewed and possibly result in changes to the initially proposed language before the rules are then filed with the Common Sense Initiative Office.

At this time, public comment is being sought on the proposed language for the following rules. Please see the rules attached.
4731-11-08  Utilizing Controlled Substances for Self & Family  No change
4731-14-01  Pronouncement of Death  Proposed
Amendment
4731-23-01  Delegation of Medical Tasks; Definitions  No Change
4731-23-02  Delegation of Medical Tasks  Proposed Amendment
4731-23-03  Delegation of Medical Tasks; Prohibitions  No change
4731-23-04  Violations  No change
4731-26-01  Sexual Misconduct and Impropriety; Definitions  Proposed Amendment
4731-26-02  Prohibitions  No Change
4731-26-03  Violations; miscellaneous  Proposed Amendment
4730-1-07  Miscellaneous Provisions  Proposed Amendment
4730-2-07  Standards for Prescribing  Proposed Amendment
4731-35-01  Consult Agreements  Proposed Amendment
4731-35-02  Standards for Managing Drug Therapy  Proposed Amendment
Deadline for submitting comments: February 12, 2021

Comments to:  Kimberly Anderson
State Medical Board of Ohio
Kimberly.Anderson@med.ohio.gov

Judy Rodriguez
Public Services Manager
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Definitions.

As used in Chapter 4731-23 of the Administrative Code:

(A) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person.

(B) "Delegate" means to transfer authority for the performance of a medical task to an unlicensed person.

(C) "On-site supervision" means that the physical presence of the physician is required in the same location (e.g., the physician's office suite) as the unlicensed person to whom the medical task has been delegated while the medical task is being performed. "On-site supervision" does not require the physician's presence in the same room.

(D) "Physician" means an individual authorized by Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or pediatric medicine and surgery.

(E) "Task" includes, but is not limited to, a routine medical service not requiring the special skills of a licensed provider.

(F) "Unlicensed person" means an individual who is not licensed or otherwise specifically authorized by the Revised Code to perform the delegated medical task.

(G) "Drug" means the same as in division (E) of section 4729.01 of the Revised Code.
4731-23-02  Delegation of medical tasks.

(A) A physician shall not delegate the performance of a medical task unless that physician has complied with all of the requirements of this chapter of the Administrative Code and the delegation otherwise conforms to minimal standards of care of similar physicians under the same or similar circumstances.

(B) Prior to a physician's delegation of the performance of a medical task, that physician shall determine each of the following:

1. That the task is within that physician's authority;
2. That the task is indicated for the patient;
3. The appropriate level of supervision;
4. That no law prohibits the delegation;
5. That the person to whom the task will be delegated is competent to perform that task; and,
6. That the task itself is one that should be appropriately delegated when considering the following factors:
   a. That the task can be performed without requiring the exercise of judgment based on medical knowledge;
   b. That results of the task are reasonably predictable;
   c. That the task can safely be performed according to exact, unchanging directions;
   d. That the task can be performed without a need for complex observations or critical decisions;
   e. That the task can be performed without repeated medical assessments; and,
   f. That the task, if performed improperly, would not present life threatening consequences or the danger of immediate and serious harm to the patient.
(C) When a physician delegates the administration of drugs, that physician shall provide on-site supervision, except in the following situations:

(1) When the physician has transferred responsibility for the on-site supervision of the unlicensed person who is administering the drug to another physician and that physician has knowingly accepted that responsibility on a patient-by-patient basis; or

(2) In the routine administration of a topical drug, such as a medicated shampoo.

(3) When delegation occurs pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities.

(4) When delegation occurs pursuant to section 5123.42 of the Revised Code.

(5) When written policies and procedures have been adopted for the distribution of drugs by an unlicensed person to individuals incarcerated in state correctional institutions as defined in division (A) of section 2796.01 of the Revised Code, other correctional facilities including county and municipal jails, workhouses, minimum security jails, halfway houses, community residential centers, regional jails and multi-county jails, or any other detention facility as defined in division (F) of section 2921.01 of the Revised Code.

(D) This chapter of the Administrative Code shall not apply if the rules contained herein:

(1) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

(2) Prevent delegation from occurring pursuant to section 5126.36 of the Revised Code within the programs and services offered by a county board of developmental disabilities;

(3) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

(4) Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;
(5) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist.

(E) Physician delegation is prohibited in all settings specified in section 5123.42 of the Revised Code.
Delegation of medical tasks; Prohibitions.

(A) A physician shall not delegate the practice of medicine as defined in section 4731.34 of the Revised Code unless specifically authorized to do so in the Revised Code or by an administrative rule adopted pursuant to the Revised Code and which became effective prior to April 10, 2001. Nothing in this chapter of the Administrative Code shall prohibit the performance of emergency medical tasks.

(B) A physician shall not delegate a task to an unlicensed person if the task is beyond that person's competence. In a hospital, as defined in section 3727.01 of the Revised Code, or an ambulatory care center affiliated with the hospital (if the center meets the same credentialing, quality assurance, and utilization review standards as the hospital) wherein unlicensed persons are employed or otherwise authorized by the governing authority of the institution to perform specific medical tasks, one factor the physician shall take into account is the policies by which the employer or the governing authority of the institution seeks to ensure that competent persons will be performing the delegated tasks.

(C) A physician shall not delegate a medical task that is not within the authority of that physician or is beyond the physician's training, expertise, or normal course of practice.

(D) A physician shall not transfer his or her responsibility for supervising an unlicensed person in the performance of a delegated medical task, except to another physician who has knowingly accepted that responsibility.

(E) A physician shall not authorize or permit an unlicensed person to whom a medical task is delegated to delegate the performance of that task to another person.

(F) Except as provided in divisions (D)(4) to (D)(8) of section 4731.053 of the Revised Code, a physician shall not delegate to an unlicensed person the administration of anesthesia, controlled substances, or drugs administered intravenously.

(G) The supervising physician retains responsibility for the manner in which the delegated task is carried out.
Violations.

(A) A violation of any provision of any rule in this chapter of the Administrative Code, as determined by the board, 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.

(B) A violation of any provision of any rule in this chapter of the Administrative Code that pertains to the administration of drugs, as determined by the board, shall constitute "failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code.
MEMORANDUM

TO: Betty Montgomery, President
    Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Initial Circulation of Rules

DATE: July 8, 2021

On June 17, 2021, the rules related to the practice of limited branch of medicine, rules requiring clean-up due to HB 442, and impairment rules to allow for outpatient evaluation and treatment for certain license types were circulated to interested parties for comment. The deadline for comments was July 2, 2021. No comments were received.

The proposed rules are attached for your review and are ready for filing with the Common Sense Initiative.

Requested Action: Approve rules for filing with Common Sense Initiative
The rules in various chapters are being circulated for comments from interested parties. The proposed changes are highlighted below.

**Limited Branches of Medicine or Surgery**

<table>
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<tr>
<th>Rule Number</th>
<th>Change Description</th>
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| 4731-1-01   | **Definition of terms – Proposed to amend**  
              * Eliminates and revises several definitions |
| 4731-1-02   | **Application of rules governing limited branches of medicine or surgery – Proposed to amend**  
              * Removes the reference to the code of ethics for cosmetic therapists  
              * Updates terminology used from “certificate” to “license” |
| 4731-1-03   | **General prohibitions – Proposed to amend**  
              * Removes a reference to cosmetic therapists  
              * Updates terminology used from “certificate” to “license” |
| 4731-1-04   | **Scope of practice: mechanotherapy – Proposed to amend**  
              * Corrects a typographical error |
| 4731-1-05   | **Scope of practice: massage therapy – Proposed to amend**  
              * Corrects typographical errors and substitutes “license” for “certificate” |
| 4731-1-07   | **Eligibility of electrologists licensed by Ohio state board of cosmetology to obtain licensure as cosmetic therapists – Proposed to rescind**  
              * Propose to rescind this provision related to cosmetic therapists |
| 4731-1-08   | **Continuing cosmetic therapy education requirements – Proposed to rescind**  
              * Propose to rescind the continuing education requirements for cosmetic therapists |
| 4731-1-09   | **Cosmetic therapy curriculum requirements – Proposed to rescind**  
              * Propose to rescind the curriculum requirements for cosmetic therapists |
| 4731-1-10   | **Distance education – Proposed to rescind**  
              * Propose to rescind requirements for distance education. Distance education is addressed to a lesser degree in proposed rule 4731-1-15. |
| 4731-1-11   | **Application and examination for certificate to practice cosmetic therapy – Proposed to rescind**  
              * Propose to rescind application and examination requirements for cosmetic therapists |
| 4731-1-12   | **Application and examination for certificate to practice massage therapy – Proposed to amend**  
              * Updates terminology used from “certificate” to “license” |
| 4731-1-15   | **Determination of standing of school, college or institution – Proposed to amend**  
              * Clarifies the education or licensure requirements for a license to practice massage therapy.  
              * Permits only one-half of the required curriculum to be provided via distance education. |
• Provides other means for which an out-of-state school can be recognized for purposes of obtaining a certificate of good standing.
• Deletes the following requirements:
  (1) that a notice be provided to students regarding the effect that criminal history may have on licensure,
  (2) that a student perform at least one therapeutic massage on a licensed massage therapist,
  (3) that the educational objectives be clearly defined and simply stated and shall indicate what the program can do for diligent students, and
  (4) that the course of instruction be outlined in detail.
• Proposes to eliminate the need to renew a certificate of good standing in favor of a requirement to provide the board notice of any relevant changes that could affect the eligibility to hold a certificate of good standing.

4731-1-16  Massage therapy curriculum requirements – Proposed to rescind
• Propose to rescind the curriculum requirements for massage therapists as they have now been codified in statute.

4731-1-17  Instructional staff in Ohio cosmetic therapy and massage therapy programs – Proposed to rescind
• Propose to rescind the rule that sets out the requirements of instructional staff in limited branch schools.

4731-1-18  Grounds for suspension, revocation or denial of certificate of good standing – Proposed to rescind
• Propose to rescind the rule that sets out the grounds for suspension, denial, or revocation of a certificate of good standing. The requirements have been moved to proposed rule 4731-1-15.

4731-1-19  Probationary status of a limited branch school – Proposed to rescind
• Propose to rescind the rule that permits a certificate of good standing to be placed on probation if graduates’ performance on the applicable licensing exam fall below certain thresholds.

Emeritus Registration

4731-22-07  Change to active status – Proposed to amend
• Deletes reference to cosmetic therapist in paragraph (B)(2).

State Medical Board Metrics

4731-30-03  Approval of licensure applications – Proposed to amend
• Deletes reference to oriental medicine practitioner in paragraph (C)(12) and renumbers the remaining paragraphs.
Military Provisions Related to Education and Experience Requirements for Licensure Applicable to Service Members, Veterans, and Spouses of Service Members and Veterans

4731-36-01 Military Provisions Related to Education and Experience Requirements for Licensure – Proposed to Amend
- Deletes reference to cosmetic therapist in (B)(2) and oriental medicine practitioner in (B)(7).

Impaired Practitioners

4731-16-02 General Procedures in Impairment Cases – Proposed to Amend
- Corrects statutory references to include all license types
- Changes references from “certificates” to “licenses”
- Clarifies that outpatient treatment is available for massage therapists, dietitians, respiratory care professionals, radiologist assistants and genetic counselors.
- Deletes references to cosmetic therapists.

4731-16-05 Examinations – Proposed to Amend
- Adds hair testing to urine and blood testing.
- Corrects statutory references to include all license types.
- Deletes reference to cosmetic therapist.
- Substitutes “biopsychosocial assessment” for chemical use history.
- Requires the administration of at least two clinically approved substance use disorder assessment tools.
- Clarifies that the assessment for massage therapists, dietitians, respiratory care professionals, radiologist assistants or genetic counselors is an outpatient assessment.
- States that a psychiatric evaluation is only required for the outpatient assessment if the need is identified by the Board or the treatment provider.

4731-16-08 Criteria for approval
- Corrects statutory references to include all license types.
- Clarifies that outpatient treatment is available for massage therapists, dietitians, respiratory care professionals, radiologist assistants and genetic counselors.
- Deletes reference to cosmetic therapists.
- Corrects typographical errors.
Definition of terms.

(A) "Board" means the state medical board of Ohio.

(B) "Certificate of good standing" means a non-transferable certificate issued by the board to the person or persons signing the application on behalf of a limited branch school, college, or institution which states that it is in good standing with the board, pursuant to section 4731.16 of the Revised Code and this chapter of the Administrative Code.

(C) "Limited branch school, college or institution" means a facility wherein a course of instruction in massage therapy is offered.

(D) "MBLEx" means the massage and bodywork licensing examination as prepared by the federation of state massage therapy boards.

(E) "Distance education" means an instructional delivery system in which students and teachers are in separate locations and in which education and training are delivered through video, audio, computer, multimedia communications or some combination.

(F) "Home study" means a form of correspondence instruction through mail or e-mail in which the institution provides lesson materials for study and completion by a student on his or her own, with completed lessons being returned by the student to the school for evaluation by the school. "Home study" shall not be considered a form of distance education.
Definition of terms.

(A) "Board" means the state medical board of Ohio.

(B) "Certificate of good standing" means a non-transferable certificate issued by the board to the person or persons signing the application on behalf of a limited branch school, which states that the school is in good standing with the board to offer a course of instruction in one limited branch of medicine, pursuant to section 4731.16 of the Revised Code and this chapter of the Administrative Code.

(C) "Clock hour" means a period of sixty minutes with a minimum of fifty minutes of instruction at the limited branch school. One semester hour is equivalent to fifteen clock hours. One quarter hour is equivalent to ten clock hours.

(D) "Course of instruction" means the complete body of prescribed subjects or studies to prepare students for admission to an examination for licensure in the limited branch of medicine.

(E) "Limited branch school" means a facility wherein a course of instruction in massage therapy or cosmetic therapy is offered.

(F) "Person" means an individual, corporation, partnership, association, or any other type of organization.

(G) "Schedule of operations" means the hours in which classes are being conducted and the hours in which other educationally related activities are in process in a limited branch school.

(H) "Similar course of instruction" means a course of instruction with the same general objective which involves the same or related instructional content, processes, tools, materials and clock hours of instruction previously approved by the board.

(I) "Subject" means a unit of learning which is an integral part of the course of instruction being pursued.

(J) "MBLEx" means the massage and bodywork licensing examination as prepared by the federation of state massage therapy boards.

(K) "CCE examination" means the "Certified Clinical Electrologist Examination" prepared by "The Society for Clinical and Medical Hair Removal."
Application of rules governing limited branches of medicine or surgery.

(A) Rules adopted by the board governing the practice of limited branches of medicine apply to practitioners of those limited branches listed in sections 4731.15 and 4731.151 of the Revised Code.

(B) Any person holding a valid certificate to practice one or more of the limited branches of medicine is subject to disciplinary action by the board, and may additionally be subject to criminal prosecution, if such person performs acts beyond the scope of the limited branch for which the person holds a certificate or which otherwise violates the rules governing practitioners of limited branches of medicine.

(C) For purposes of division (B)(18) of section 4731.22 of the Revised Code, the code of ethics and standards of practice of the "American Massage Therapy Association" applies to all persons holding a certificate to practice massage therapy. The code of ethics may be obtained from the medical board's website at med.ohio.gov/.

(D) For purposes of division (B)(18) of section 4731.22 of the Revised Code, the code of ethics and standards of practice of the "Society for Clinical and Medical Hair Removal, Inc." applies to all persons holding a certificate to practice cosmetic therapy. The code of ethics may be obtained from the medical board's website at med.ohio.gov/.
4731-1-03  General prohibitions.

(A) No person holding a certificate license to practice a limited branch of medicine shall perform or hold himself or herself out as able to perform surgery, or any other act which involves a piercing or puncturing of the skin or membranous tissues of the human body unless specifically permitted under Chapter 4731. of the Revised Code or this chapter of the Administrative Code. This rule does not prohibit a licensed cosmetic therapist with appropriate training from removing an ingrown hair.

(B) No person holding a certificate license to practice a limited branch of medicine shall prescribe, dispense, personally furnish or administer any drug or medicine.

(C) Except as is specifically permitted under the rules defining the scope of a limited branch of medicine, no person holding such a certificate license shall diagnose or treat infectious, contagious or venereal diseases, or any wound, fracture or bodily injury, infirmity, or disease.

(D) The designation "Dr." or "Doctor" shall not precede the name of the limited practitioner. No person holding a certificate license to practice a limited branch of medicine shall employ, or cause to be employed, the designation "Dr." or "Doctor" without also qualifying such designation by the name or an abbreviation of the limited branch for which the person holds a certificate license. The appropriate designation must follow the name of the limited practitioner (e.g., "John Doe, Doctor of Mechanotherapy" or "John Doe, D.M.") and may be employed or caused to be employed by the limited practitioner only if the limited practitioner has received a degree granting such a title from a school legally empowered to grant the degree.

(E) No person holding a certificate license to practice a limited branch of medicine shall employ, or cause to be employed, the designation "Physician" or "Surgeon" no matter how qualified or how employed in combination with other language.

(F) No person holding a certificate license to practice any limited branch or branches of medicine shall hold himself or herself out as holding a certificate license in or as being able to practice any limited branch of medicine for which that person does not hold a certificate license.

(G) No person holding a certificate license to practice any limited branch or branches of medicine shall conduct such practice under any name or title, either as an individual, company or concern, that is misleading.
(A) A practitioner of mechanotherapy shall examine patients only by verbal inquiry, examination of the musculoskeletal system by hand, and visual inspection and observation. A practitioner of mechanotherapy shall specifically not employ any techniques which involve extraction or analysis of body tissue or fluids.

(B) A practitioner of mechanotherapy shall not diagnose a patient's condition except as to whether or not there is a disorder of the musculoskeletal system present.

(C) A practitioner of mechanotherapy, in the treatment of patients, may apply only those techniques listed in this paragraph, but he may apply such techniques only to those disorders of the musculoskeletal system which are amenable to treatment by the listed techniques and which are identifiable by examination and diagnosis as described in this rule:

(1) Advised or supervised exercise;

(2) Massage or manipulation;

(3) Employment of air, water, heat, cold, sound or infrared rays; or

(4) Electrical neuromuscular stimulation.
Scope of practice: massage therapy.

(A) Massage therapy is the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices.

(B) A massage therapist shall not diagnose a patient's condition. A massage therapist shall evaluate whether the application of massage therapy is advisable. A massage therapist may provide information or education consistent with that evaluation, including referral to an appropriate licensed health care professional, provided that any form of treatment advised by a massage therapist falls within the scope of practice of, and relates directly to a condition that is amenable to treatment by, a massage therapist. In determining whether the application of massage therapy is advisable, a massage therapist shall be limited to taking a written or verbal inquiry, visual inspection including observation of range of motion, touch, and the taking of a pulse, temperature and blood pressure.

(C) No person shall use the words or letters "massage therapist," "licensed massage therapist," "L.M.T." or any other letters, words, abbreviations, or insignia, indicating or implying that the person is a licensed massage therapist without a valid license under Chapter 4731. of the Revised Code.

(D) A massage therapist may perform the following services in compliance with the following:

(1) A massage therapist may treat temporomandibular joint dysfunction provided that the patient has been directly referred in writing for such treatment to the massage therapist by a physician currently licensed pursuant to Chapter 4731. of the Revised Code, by a chiropractor currently licensed pursuant to Chapter 4734. of the Revised Code, or a dentist currently licensed pursuant to Chapter 4715. of the Revised Code.

(2) A massage therapist may apply ultrasound, diathermy, electrical neuromuscular stimulation, or substantially similar modalities provided that the patient has been directly referred in writing for such treatment to the massage therapist by a physician or podiatric physician licensed under Chapter 4731. of the Revised Code, physician assistant licensed under Chapter 4730. of the Revised Code, chiropractor licensed under Chapter 4734. of the Revised Code, advanced practice registered nurse licensed under Chapter 4723. of the Revised Code, or physical therapist licensed under Chapter 4755. of the Revised Code, who is acting within the scope of their professional license.
(a) The massage therapist must perform the modality within the minimal standards of care.

(b) If the food and drug administration classifies the device as a prescription device, as that term is defined in 21 CFR 801.109 amended as of June 15, 2016, or a restricted device that can only be sold, distributed, or used upon the order of an authorized healthcare provider, the massage therapist’s application of the device must be done under the on-site supervision of the referring practitioner.

(c) If the food and drug administration classifies the device as an over-the-counter device, the massage therapist may apply the device without the on-site supervision of the referring practitioner.

(E) All persons who hold a certificate/license to practice massage therapy issued pursuant to section 4731.17 of the Revised Code shall prominently display that certificate/license in the office or place where a major portion of the certificate/license holder's practice is conducted. If a certificate/license holder does not have a primary practice location, the certificate/license holder shall at all times when practicing keep either the wall certificate on the holder's person or provide verification of licensure status from the board's internet web site upon request. The board's website is: www.med.ohio.gov.

(F) Massage therapy does not include:

(1) Colonic irrigation;

(2) The practice of chiropractic, including the application of a high velocity-low amplitude thrusting force to any articulation of the human body;

(3) The use of graded force applied across specific joint surfaces for the purpose of breaking capsular adhesions;

(4) The prescription of therapeutic exercise for the purpose of rehabilitation or remediation of a disorder of the human body;

(5) The treatment of infectious, contagious or venereal diseases;

(6) The prescription, dispensing, personally furnishing or administration of drugs; and
(7) The performance of surgery or practice of medicine in any other form.

(G) As used within this rule:

(1) "External" does not prohibit a massage therapist from performing massage therapy inside the mouth or oral cavity; and

(2) "Mechanical devices" means any tool or device which mimics or enhances the actions possible by the hands that is within the scope of practice as defined in section 4731.04 of the Revised Code and this rule.
Eligibility of electrologists licensed by the Ohio state board of cosmetology to obtain licensure as cosmetic therapists pursuant to Chapter 4731. of the Revised Code and subsequent limitations.

A person who was issued a cosmetic therapist's license prior to February 1, 1993 based upon holding a certificate to practice electrolysis and registration issued under Chapter 4713. of the Revised Code, may be registered by the board as a cosmetic therapist but may not apply "systematic friction, stroking, slapping, and kneading or tapping of the face, neck, scalp, or shoulders" as defined in division (A) of section 4731.04 of the Revised Code until that person has completed coursework in that area that has been approved by the board at a school approved by the board pursuant to this chapter of the Administrative Code.
Continuing cosmetic therapy education requirements for renewal, reinstatement, or restoration of a license to practice cosmetic therapy.

(A) "License renewal" is the extension of a current license by fulfilling the requirements of division (C) of section 4731.15 of the Revised Code and the continuing education requirements of this rule.

(B) "License reinstatement" is the reactivation of a license which has lapsed or been in a suspended or inactive status for two years or less for any reason including a failure to comply with division (C) of section 4731.15 of the Revised Code or the continuing education requirements of this rule.

(C) "License restoration" is the reactivation of a license which has lapsed or been in a suspended or inactive status for more than two years for any reason including a failure to comply with division (C) of section 4731.15 of the Revised Code or the continuing education requirements of this rule.

(D) On or before the expiration dates established in table 1 of this rule, each applicant for license renewal shall certify to the board that since the start of the applicant's registration period, the applicant has completed twelve hours of "Continuing Cosmetic Therapy Education" (hereinafter "CCTE") less any reduction in hours allowed by the board under paragraph (K) or (L) of this rule.

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<th>First Initial of Last Name</th>
<th>License Expiration Date</th>
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<tr>
<td>A-B</td>
<td>July of odd numbered years</td>
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<tr>
<td>C-D</td>
<td>April of odd numbered years</td>
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<td>E-G</td>
<td>January of odd numbered years</td>
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<td>H-K</td>
<td>October of even numbered years</td>
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<td>L-M</td>
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<td>N-R</td>
<td>April of even numbered years</td>
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<td>S</td>
<td>January of even numbered years</td>
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<tr>
<td>T-Z</td>
<td>October of odd numbered years</td>
</tr>
</tbody>
</table>

(E) All applicants who apply for license reinstatement shall certify to the board that in the preceding registration period, they have completed the twelve hour CCTE
requirement less any reduction in hours allowed by the board under paragraph (K) or (L) of this rule.

(F) All applicants who apply for license restoration shall have completed twelve hours of CCTE within the preceding two years from the date of the application.

(G) If a person has not completed the requisite hours of CCTE, that person is not eligible for license renewal, reinstatement, or restoration until such time as those hours have been completed. Any CCTE undertaken after the end of a registration period and utilized for purposes of reinstatement or restoration of a suspended license cannot also be utilized to meet the CCTE requirement for the current registration period.

(H) Persons who are residing or practicing out of the state who wish to renew or reinstate their license to practice cosmetic therapy in Ohio must complete the required CCTE within the registration period even though not currently residing or practicing in Ohio.

(I) The certification required by paragraphs (D) and (E) of this rule shall be evidence of completion of the CCTE requirement as set forth in this rule, provided that:

   (1) The board may randomly select applications for verification that all CCTE requirements have been met. Persons whose applications are selected shall submit additional documentation of compliance with CCTE requirements as the board may require.

   (2) Records of all CCTE undertaken shall be retained for after the end of the registration period. Failure to maintain evidence of completion and supporting documentation as required by paragraph (N) of this rule rebuts the presumption established in paragraph (I) of this rule that the CCTE requirements have been completed.

(J) Nothing in this rule shall limit the board's authority to investigate and take action under section 4731.22 of the Revised Code.

(K) Reduction of hours can be granted on an individual basis to those who have been ill for more than six consecutive months or out of the United States for more than six consecutive months during the registration period. The applicant will have the burden of establishing that that person's illness or absence affected that person's reasonable opportunity to participate in CCTE activities. One half hour will be subtracted from the CCTE requirement for each month which is approved for reduction of hours. Requests for reduction of hours must be made in writing to the state medical board and submitted to the board at least sixty days prior to the end of
the registration period.

(L) The CCTE requirement for persons licensed after the start of a registration period or for whom the license has been restored shall be computed in the following manner:

(1) If the license is initially issued prior to the first day of the second year of the registration period, the licensee shall be required to earn six total hours;

(2) If the license is issued on or after the first day of the second year of the registration period and prior to the first day of the eighteenth month of that period, the licensee shall be required to earn three total hours;

(3) If the license is issued on or after the first day of the eighteenth month of the registration period, the licensee shall not be required to earn any hours of CCTE credits for that period.

(M) If the board proposes to refuse to renew, reinstate, or restore a license for failure to meet the CCTE requirements of this rule, the applicant shall be entitled to a hearing on the issue of such proposed denial. Notice and hearing requirements incident to such proposed denial will be in compliance with the provisions of Chapter 119. of the Revised Code.

(N) CCTE course requirements:

(1) All hours of CCTE shall be:

(a) In one or more of the following subject matter areas

(i) Laser hair removal;

(ii) Electrolysis/ETB/hair removal;

(iii) Sterilization and hygiene;

(iv) Professional ethics;

(v) Blood borne pathogens;

(vi) Endocrinology;
(vii) Anatomy and physiology as it relates to the dermis;

(viii) Diseases of the skin;

(ix) Cosmetic therapy law;

(x) Massage of the face, neck, scalp, or shoulders.

(b) Offered by one of the following entities:

(i) A college or university approved by the state department of education;

(ii) A state or national professional cosmetic therapy or electrology association;

(iii) A cosmetic therapy school approved by the board pursuant to this chapter of the Administrative Code;

(iv) A health department or hospital which offers program which had been previously approved for continuing medical education (CME) credits or for continuing nursing education credits (CNE);

(v) A provider accredited by the international association for continuing education and training.

(2) CCTE courses may be completed via in-person, webinar, or on-line.

(3) A cosmetic therapist shall obtain evidence of completion (i.e., a certificate) from the provider of the CCTE for all CCTE hours that are successfully completed. In the event that evidence of completion includes hours of education in a subject not included in paragraph (N)(1) of this rule, the cosmetic therapist shall only claim the hours that meet the requirements of this rule. Cosmetic therapists shall also retain supporting documentation of all of the following:

(a) Description of the CCTE activity;

(b) The location of the CCTE activity;
(c) The date of attendance;

(d) The hours of each CCTE activity.

(4) Evidence of completion and supporting documentation shall be retained by the applicant for renewal for one year after the end of the registration period.

(O) An expired license to practice as a cosmetic therapist shall be renewed upon payment of the biennial renewal fee provided in section 4731.15 of the Revised Code and without a late fee or re-examination if the holder meets all of the following requirements:

(1) The licensee is not otherwise disqualified from renewal because of mental or physical disability.

(2) The licensee meets the requirements for renewal under section 4731.15 of the Revised Code.

(3) Either of the following situations applies:

(a) The license was not renewed because of the licensee's service in the armed forces, or

(b) The license was not renewed because the licensee's spouse served in the armed forces, and the service resulted in the licensee's absence from this state.

(4) The licensee or the licensee's spouse, whichever applicable, has presented satisfactory evidence of the service member's discharge under honorable conditions or release under honorable conditions from active duty or national guard duty within six months after the discharge or release.

(P) Extension of the continuing education period based on active duty status:

(1) The holder of a cosmetic therapy license may apply for an extension of the current continuing education reporting period in the manner provided in section 5903.12 of the Revised Code.

(2) The board shall consider relevant education, training, or service completed by the licensee as a member of the armed forces in determining whether a
licensee has met the continuing education requirements to renew the license.

(3) Upon receiving the application and proper documentation, the board shall act in accordance with section 5903.12 of the Revised Code.

(Q) For purposes of this paragraphs (O) and (P) of this rule, "armed forces" has the same meaning as in section 5903.01 of the Revised Code and "reporting period" has the same meaning as in section 5903.12 of the Revised Code.
Cosmetic therapy curriculum requirements.

(A) To qualify to receive a certificate of good standing for a course of instruction in cosmetic therapy, a school's course of instruction shall:

(1) Consist of both practical and theoretical instruction covering a period of not less than one year and a minimum of six hundred clock hours. The course of instruction shall include a minimum of seven hundred and fifty clock hours covering a period of not less than nine months.

(2) Teach at least the minimum required hours in the following subjects in dedicated clock hours, as appropriate to cosmetic therapy:

(a) Anatomy and physiology; pathology: three hundred twenty-five clock hours;

(b) Cosmetic therapy theory and practical, including infection control and hygiene: three hundred twenty-five clock hours;

(c) Ethics: twenty-five clock hours, at least ten of which shall be in a class dedicated exclusively to ethics. For purposes of this rule, "ethics" shall be defined to include sexual boundary issues and impairment and chemical dependency issues;

(d) Business and law: twenty-five clock hours; and

(e) Such other subjects as the board deems necessary and appropriate to cosmetic therapy: fifty clock hours.

(B) Educational objectives shall be clearly defined and simply stated and shall indicate what the educational program can do for reasonably diligent students.

(C) The course of instruction shall be outlined in detail showing major subjects and clock hours devoted to each subject, entrance requirements and occupational objectives.

(D) A limited branch school shall submit for approval on an appropriate form its daily or weekly schedule of instruction. The approved schedule shall be made available whenever requested by the board.

(E) Students may be given credit for off-site clinical activities.

(1) Such credit may not exceed ten percent of the required clock hours in the theory
and practical category of the program.

(2) The off-site clinical activities shall be conducted under the direction and on-site supervision of an appropriately licensed practitioner.

(3) The school shall be required to enter into a written affiliation agreement with a representative of the facility where the off-site clinical activities are being provided, and to maintain records of each student's clinical activities. Upon request of the board, schools shall forward those records to the board for review.

(4) The student participating in off-site clinical activities shall identify him or herself at all times as a cosmetic therapy student and shall obtain signed acknowledgement of receipt of that notice from the patient.
Distance education.

(A) For purposes of this chapter of the Administrative Code:

(1) "Asynchronous instructional methods" means an educational technique in which the communication between parties does not take place simultaneously and in which students may access a prepared educational program electronically or by other means at a time of their own choosing rather than at a specified time;

(2) "Brick and mortar school" means an educational institution in which students and faculty are co-located during the entirety of the course of instruction.

(3) "Distance education" means an instructional delivery system in which students and teachers are in separate locations during at least half of the total number of hours offered during the course of study and in which education and training are delivered through video, audio, computer, multimedia communications or some combination of these with other traditional delivery methods;

(4) "Home study school" means a form of correspondence instruction through mail or e-mail in which the institution provides lesson materials for study and completion by a student on his or her own, with completed lessons being returned by the student to the school for evaluation by the school. "Home study school" shall not be considered a form of distance education.

(5) "Synchronous instructional methods" means an educational technique in which the communication between parties takes place simultaneously and in real-time.

(B) Each distance education program shall apply for and receive a separate certificate of good standing from the board prior to the students who have completed a course of instruction from that school being admitted to the licensure examination. A certificate of good standing held by a brick and mortar school shall not be sufficient for any distance learning program operated by that school.

(C) To be eligible to receive a certificate of good standing from the board, a distance education school or program shall submit evidence that complies with all of the following:

(1) Meet all of the requirements for receipt of a certificate of good standing required pursuant to Chapter 4731. of the Revised Code and this chapter of the Administrative Code;
(2) Have in place a procedure whereby applicants for a distance education course of instruction are assessed as to their psychological predisposition toward distance learning and their capabilities to use computer technologies appropriate to the particular course of study;

(3) Have in place a plan for on-line attendance and assessment of student performance;

(4) Require instructors, in addition to the requirements of rule 4731-1-17 of the Administrative Code, to have documented training or certification in the development of distance education course materials, curricula and instructional methods;

(5) Demonstrate possession of minimally sufficient technical resources to meet the requirements of this rule;

(6) Offer a mix of synchronous and asynchronous instruction and identify the number of clock hours required for each form of instruction;

(7) Of the three hundred twenty-five clock hours in theory and practical required in rules 4731-1-09 and 4731-1-16 of the Administrative Code, a minimum of two hundred hours shall be hands-on instruction in the limited branch theory and practical portion of the course of instruction.

(8) Of the minimum of twenty-five hours of instruction in ethics required in rules 4731-1-09 and 4731-1-16 of the Administrative Code, a minimum of ten hours shall be taught in a dedicated interactive manner during the hands-on instruction;

(9) Provide to all applicants an explanation of the types of delivery systems used in the distance education course of instruction, hardware and software requirements, whether the school will provide remedial technical training, and any other information the board deems appropriate.

(D) Home study schools are considered to be inappropriate for the education required to be given by limited branch schools. Therefore, any home study school is not in good standing with the board for purposes of admitting graduates from that school for examination for licensure in a limited branch of medicine or surgery.

(E) The certificate of good standing issued pursuant to this rule is valid for two years from the date of issuance. It may be renewed upon the holder's submission of
evidence demonstrating that all of the requirements of paragraph (C) of this rule are satisfied, as determined by the board.
Application and examination for certificate to practice cosmetic therapy.

(A) No application for a certificate to practice cosmetic therapy shall be considered complete until the applicant has complied with the requirements of paragraph (A) of rule 4731-4-02 of the Administrative Code and the board has received the results of criminal records checks and any other forms required to be submitted pursuant to paragraph (A) of rule 4731-4-02 of the Administrative Code.

(B) An applicant seeking a certificate to practice cosmetic therapy who meets the requirements of section 4731.19 of the Revised Code shall apply to the board in compliance with section 4731.19 of the Revised Code.

(C) Any person seeking a certificate to practice cosmetic therapy shall have passed the CCE examination.

   (1) An applicant for the CCE examination shall apply directly to "The Society for Clinical & Medical Hair Removal." The website address is: https://www.scmhr.org/.

   (2) The passing performance for the CCE examination as reported by "The Society for Clinical & Medical Hair Removal" shall constitute successful completion of the examination.
Application and examination for certificate license to practice massage therapy.

(A) No application shall be considered complete until the applicant has complied with the requirements of paragraph (A) of rule 4731-4-02 of the Administrative Code and the board has received the results of criminal records checks and any other forms required to be submitted pursuant to paragraph (A) of rule 4731-4-02 of the Administrative Code.

(B) All applicants seeking a certificate license to practice massage therapy who meet the requirements of section 4731.19 of the Revised Code, shall apply to the board in compliance with section 4731.19 of the Revised Code.

(C) Any person seeking a certificate license to practice massage therapy shall have passed the MBLEx available through the federation of state massage therapy boards.

(1) An applicant for the MBLEx shall apply directly to the federation of state massage therapy boards.

(2) The passing performance for the examination as reported by the federation of state massage therapy boards shall constitute successful completion of the examination.
Massage Therapy Educational Requirements and Determination of standing of school, college or institution.

(A) For purposes of this rule, “hours” as used in section 4731.19 of the Revised Code, means a period of sixty minutes with a minimum of fifty minutes of instruction.

(B) A person seeking a license to practice massage therapy must hold one of the following:

1. A diploma or certificate from a limited branch school, college or institution located in Ohio that held a certificate of good standing at the time the person obtained the diploma or certificate.

2. A diploma or certificate from a limited branch school, college or institution located outside of Ohio that held a certificate of good standing at the time the person obtained the diploma or certificate.

3. A diploma or certificate from a limited branch school, college or institution located outside of Ohio that required the completion of a course of instruction meeting the requirements section 4731.19 of the Revised Code. No more than one-half of the course of instruction required by section 4731.19 of the Revised Code may have been provided via distance education.

4. During the five-year period immediately preceding the date of application, a current license, registration, or certificate in good standing in another state for massage therapy.

(C) A person desiring to have the board determine the standing of a limited branch school, college or institution shall file an application for a certificate of good standing in the form and manner prescribed by the board. The completed application shall be signed by the owner or owners and shall provide evidence of the following:

1. If the limited branch school, college or institution is located in this state, that:

   a. It holds a certificate of authorization issued by the Ohio department of higher education pursuant to Chapter 1713. of the Revised Code; or

   b. It holds a valid certificate of registration and a valid program authorization for the program in the limited branch of medicine issued by the state board of career colleges and schools pursuant to Chapter 3332. of the Revised Code; or

   c. It holds a certificate of authorization issued by the Ohio department of education, division of career/technical adult education; and

   d. It offers a course of instruction in compliance with section 4731.19 of the Revised Code. No more than one-half of the course of instruction
required by section 4731.19 of the Revised Code may be provided via
distance education.

(2) If the limited branch school, college or institution is located outside this state, that:

(a) It holds a current or valid registration authorizing its operation issued by
the appropriate regulatory body in the state of location that is
substantially equivalent to the board of regents, the state board of career
colleges and schools, or the department of education in this state; or

(b) approval or recognition by the state board or agency authorized to regulate
the limited branch of medicine in the state in which the limited branch
school, college, or institution is located; or

(c) in the event that the limited branch school, college, or institution is located
in a state that does not approve or recognize such facilities or
educational programs, approval by the Federation of State Massage
Therapy Boards for purposes of permitting graduates to sit for the
MBLEX; and

(d) It offers a course of instruction in compliance with section 4731.19 of the
Revised Code. No more than one-half of the course of instruction
required by section 4731.19 of the Revised Code may be provided via
distance education.

(D) An application for a certificate of good standing shall be signed by all owners and
may not be signed by a person who has been found guilty of a felony or a crime
involving moral turpitude, or by a person who has been disciplined by the board
pursuant to section 4731.22 of the Revised Code.

(E) The board may refuse to issue, suspend, place on probation, revoke, or permanently
revoke a certificate of good standing for any one or any combination of the
following causes:

(1) Non-compliance with or failure to fulfill the provisions of this chapter of the
Administrative Code or applicable provisions of Chapter 4731. of the Revised
Code

(2) Furnishing of false, misleading, or incomplete information requested by the
board

(3) Violation of state or federal laws including discrimination in the acceptance and
education of students upon the basis of race, color, religion, sex, or national
origin

(F) If the board refuses to issue, suspend, place on probation, revoke, or permanently
revoke a certificate of good standing, the applicant or the certificate holder shall be entitled to a hearing. Notice and hearing requirements will be in compliance with the provisions of Chapter 119. of the Revised Code and any rules adopted by the board.

(G) In determining the effective date of any suspension, revocation, or permanent revocation of a certificate, the board shall take into consideration those students currently enrolled in the course of instruction.

(H) A certificate of good standing issued pursuant to this rule is valid as long as the limited branch, school, college, or institution remains in compliance with all of the requirements of this rule, including requirements for eligibility for issuance of the certificate. The holder of a certificate of good standing must provide notice to the board within thirty days of any change to its ownership, authority to operate, course of instruction, or any other matter bearing upon the holder's eligibility to hold a certificate of good standing.
4731-1-15 Determination of standing of school, college or institution.

(A) A person desiring to have the board determine the standing of a school, college or institution that offers instruction in a limited branch of medicine shall file a completed application for a certificate of good standing with the board on a form prescribed by the board. The completed application form and other data shall be submitted in full. The completed application shall be signed by the owner or owners and shall include the following information:

(1) If the school, college or institution is located in this state, that:

(a) It holds a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code; or

(b) It holds a valid certificate of registration and a valid program authorization for the program in the limited branch of medicine issued by the state board of career colleges and schools registration pursuant to Chapter 3332. of the Revised Code; or

(c) It holds a certificate of authorization issued by the Ohio department of education, division of career/technical adult education; and

(d) It offers a course of instruction in compliance with this chapter of the Administrative Code.

(2) If the school, college or institution is located outside this state, that:

(a) It holds a current or valid registration authorizing its operation issued by the appropriate regulatory body in the state of location that is substantially equivalent to the board of regents or the state board of career colleges and schools registration in this state; and

(b) It offers a course of instruction in compliance with this chapter of the Administrative Code.

(B) At or before the time a school, college or institution in this state accepts a student for admission to a cosmetic therapy or massage therapy course of instruction, the school, college or institution shall provide the student with written notice regarding arrests, charges, or convictions of criminal offenses.

(1) The notice must inform the student that arrests, charges, or convictions of criminal offenses may be cause to deny or limit licensure or employment opportunities in specific careers and occupations and may limit the student's
ability to obtain federal, state, and other financial aid. The notice must encourage students to investigate these possibilities.

(2) The notice provided under this rule must direct students to paragraph (D) of rule 4731-4-02 of the Administrative Code for factors the board may consider when reviewing the results of a criminal records check.

(C) At or before the time a school, college, or institution in this state accepts a student for admission to a cosmetic therapy or massage therapy course of instruction, the student must have attained high school graduation or its equivalent.

(D) A school, college or institution not meeting the requirements of paragraph (A) of this rule shall not be considered a school in good standing, provided that a school, college or institution that offers instruction in a limited branch of medicine and that holds a valid provisional certificate of good standing or a valid certificate of good standing on the effective date of this rule shall continue to be recognized as a school in good standing for one year following the effective date of this rule, unless suspended, revoked or placed on probation by the board pursuant to this chapter of the Administrative Code.

(E) The certificate of good standing issued pursuant to this rule is valid for two years from the date of issuance. It may be renewed upon the holder's submission of evidence demonstrating that all of the requirements of paragraph (C) of this rule are satisfied, as determined by the board.
4731-1-16 Massage therapy curriculum requirements.

(A) To qualify to receive a certificate of good standing for a course of instruction in massage therapy, a school's course of instruction shall:

(1) Consist of both practical and theoretical instruction meeting one of the following requirements:

   (a) For classes enrolling no later than December 30, 2005, a period of not less than one year and a minimum of six hundred clock hours; or

   (b) For classes enrolling on and after December 31, 2005, a minimum of seven hundred fifty clock hours.

(2) Beginning with classes enrolling on or after December 31, 2005, teach at least the minimum required hours in the following subjects in dedicated clock hours, as appropriate to massage therapy:

   (a) Anatomy and physiology; pathology: three hundred twenty-five clock hours;

   (b) Massage theory and practical, including hygiene: three hundred twenty-five clock hours;

   (c) Ethics: twenty-five clock hours, at least ten of which shall be in a class dedicated exclusively to ethics. For purposes of this rule, "ethics" shall be defined to include sexual boundary issues and impairment and chemical dependency issues;

   (d) Business and law: twenty-five hours; and

   (e) Such other subjects as the board deems necessary and appropriate to massage therapy: fifty clock hours; and

(3) Require that each student, prior to completing the course of instruction, perform, on a licensed massage therapist, at least one therapeutic massage. The school shall ensure that the student massage is evaluated as to whether the student demonstrates at least minimally acceptable competency.

(B) Educational objectives shall be clearly defined and simply stated and shall indicate what the educational program can do for reasonably diligent students.
(C) The course of instruction shall be outlined in detail showing major subjects and clock hours devoted to each subject, entrance requirements and occupational objectives.

(D) A limited branch school shall submit for approval on an appropriate form its daily or weekly schedule of instruction. The approved schedule shall be made available whenever requested by the board.

(E) Students may be given credit for off-site clinical activities. Such credit may not exceed ten per cent of the required clock hours in the theory and practical category of the program. The off-site clinical activities shall be conducted under the direction and on-site supervision of an appropriately licensed practitioner. The school shall be required to enter into a written affiliation agreement with a representative of the facility where the off-site clinical activities are being provided. The student participating in off-site clinical activities shall identify him or herself as a massage therapy student and shall obtain signed acknowledgement of receipt of that notice from the patient.
Instructional staff in Ohio cosmetic therapy and massage therapy programs.

(A) An instructor in limited branch theory or clinical practice shall be a high school graduate or equivalent, shall be currently licensed in Ohio in the applicable limited branch and shall have practiced in the applicable limited branch for a minimum of three years.

(B) A classroom instructor teaching basic science or general education courses shall hold a bachelor's degree with a concentration in the discipline in which that instructor is providing instruction. The requirements of this paragraph may be waived for faculty who, on the date this rule becomes effective, have taught the course for more than one year at a limited branch school that holds a certificate of good standing issued by the board.

(C) An instructor in massage therapy business courses shall meet one of the following requirements:

(1) Hold at least a bachelor's degree with a concentration in business;

(2) Have experience in all aspects of a massage therapy business gained as an owner and operator of a massage therapy business for a minimum of three years;

(3) Have experience in all aspects of a massage therapy business gained as a manager of a massage therapy business for a minimum of three years.
Grounds for suspension, revocation or denial of certificate of good standing; hearing rights.

(A) The board may refuse to issue or renew, suspend, place on probation, or permanently revoke a certificate of good standing for any one or any combination of the following causes:

(1) Non-compliance with or failure to fulfill the provisions of this chapter of the Administrative Code or applicable provisions of Chapter 4731. of the Revised Code;

(2) Furnishing of false, misleading, or incomplete information requested by the board;

(3) The signing of an application or the holding of a certificate of good standing by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of a crime involving moral turpitude;

(4) The signing of an application or the holding of a certificate of good standing by a person who has been disciplined by the board pursuant to section 4731.22 of the Revised Code;

(5) Violation of any commitment made in an application for a certificate of good standing; or

(6) Discrimination in the acceptance and education of students upon the basis of race, color, religion, sex, or national origin;

(7) Failure of a school’s graduates to demonstrate minimally adequate performance on the MBLEx or the CCE examination as determined under paragraph (A) of rule 4731-1-19 of the Administrative Code; or

(8) Failure to provide the notice required in paragraph (B) of rule 4731-1-15 of the Administrative Code.

(B) If the board proposes to refuse to issue or renew, suspend, place on probation, or permanently revoke a certificate of good standing or provisional certificate of good standing, the applicant or the certificate holder shall be entitled to a hearing such proposal. Notice and hearing requirements will be in compliance with the provisions of Chapter 119. of the Revised Code and any rules adopted by the board.

(C) In determining the effective date of any suspension or permanent revocation of a certificate, the board shall take into consideration those students currently enrolled...
in the course of instruction subject to the permanent revocation or suspension.
Probationary status of a limited branch school.

(A) If the graduates of a course of instruction at any limited branch school holding a certificate of good standing collectively fail to demonstrate minimally adequate performance as determined by the board on the CCE examination for cosmetic therapy or the MBLEx for massage therapy, the board may place that school's certificate of good standing on probationary status.

(1) Graduates of a course of instruction in cosmetic therapy at a limited branch school shall be deemed to have failed to demonstrate minimally adequate performance on the CCE examination if:

(a) The average overall examination score for all first time test takers from that school during the past calendar year was below the established passing score for the examination for that year; and

(b) Such a finding is supported by other relevant factors as the board may deem appropriate.

(2) Graduates of a course of instruction in massage therapy at a limited branch school shall be deemed to have failed to demonstrate minimally adequate performance on the MBLEx if:

(a) The average overall examination score for all first time test takers from that school during the past calendar year was below the established passing score for the examination for that year; and

(b) Such a finding is supported by other relevant factors as the board may deem appropriate.

(B) If a certificate of good standing of a limited branch school is placed on probationary status and graduates of that course of instruction collectively fail to demonstrate improved performance as determined by the board during the succeeding twelve months, the board may refuse to renew, or revoke or suspend that certificate.

(1) In determining whether graduates of a course of instruction in cosmetic therapy at a limited branch school have demonstrated improved performance the board shall review the following:

(a) Whether the overall examination score for all first time test takers from that school during the previous calendar year is above the established passing score for the examination; and
(b) Such other relevant factors as the board may deem appropriate.

(2) In determining whether graduates of a course of instruction in massage therapy at a limited branch school have demonstrated improved performance the board shall review the following:

(a) Whether the average overall examination score for all first time test takers from that school during the previous calendar year is above the established passing score for the examination; and

(b) Such other relevant factors as the board may deem appropriate.

(C) If the board proposes to refuse to issue or renew, suspend, place on probation, or revoke a certificate of good standing, the certificate holder shall be entitled to a hearing on such proposal. Notice and hearing requirements will be in compliance with the provisions of Chapter 119. of the Revised Code and with any rules adopted by the board.

(D) No partner, officer or stockholder of a school that is on probation shall be permitted to apply for a certificate of good standing for a new school.
4731-22-07 Change to active status.

(A) A registrant may apply to change to active status by completing the following:

1. If the application is received no more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a reinstatement application.

2. If the application is received more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a restoration application.

(B) The reinstatement or restoration application shall include all of the following.

1. Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.

2. Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code if the registrant is a physician or pursuant to section 4731.15 of the Revised Code if the registrant is a massage therapist or cosmetic therapist.

3. Submission of any other information required by the board.

(C) In the event the holder of an emeritus certificate applies for restoration after two years from the date the registrant's Ohio license expired or if the registrant has not engaged in practice for more than two years, the board may require the applicant to demonstrate present fitness to practice pursuant to section 4731.222 of the Revised Code.
Approval of licensure applications.

(A) For purposes of this rule, routine authorization means issuance of a license or certificate to an individual pursuant to an application that meets the following criteria:

1. The applicant meets eligibility requirements for the license or certificate under the applicable provisions of the Revised Code and Administrative Code.

2. The applicant is not seeking a waiver of, or a determination of equivalency to, any eligibility requirement, as may be provided for under the applicable provisions of the Revised Code and Administrative Code.

3. The applicant is not required to demonstrate fitness to resume practice due to inactivity under the applicable provisions of the Revised Code and Administrative Code.

4. The application presents no grounds for discipline under the applicable provisions of the Revised Code or Administrative Code.

(B) The board authorizes the secretary and supervising member of the board to issue the following routine authorizations under the provisions of the Revised Code and Administrative Code, without prior consultation or approval by the board:


2. Clinical research faculty certificate pursuant to section 4731.293 of the Revised Code.

3. Visiting clinical professional development certificate pursuant to section 4731.298 of the Revised Code.

4. Special activity certificate pursuant to section 4731.294 of the Revised Code.

5. Special activity license to practice as a genetic counselor pursuant to section 4778.09 of the Revised Code.

6. Expedited license to practice medicine and surgery or osteopathic medicine and surgery by endorsement pursuant to section 4731.299 of the Revised Code.

7. Certificate to recommend medical use of marijuana pursuant to section 4731.30.
(C) The board authorizes the deputy director of licensure, or the deputy director’s
designee, to issue the following routine authorizations under the provisions of the
Revised Code and Administrative Code, without prior consultation or approval by
the board:

(1) License to practice as a physician assistant pursuant to section 4730.12 of the
Revised Code;

(2) License to practice medicine and surgery or osteopathic medicine and surgery
pursuant to section 4731.14 of the Revised Code;

(3) License to practice a limited branch of medicine pursuant to section 4731.17 of
the Revised Code;

(4) Training certificate pursuant to section 4731.291 of the Revised Code;

(5) Volunteer’s certificate pursuant to section 4731.295 of the Revised Code;

(6) License to practice podiatric medicine and surgery pursuant to section 4731.56
of the Revised Code;

(7) Visiting podiatric faculty certificate pursuant to section 4731.572 of the Revised
Code;

(8) Podiatric training certificate pursuant to section 4731.573 of the Revised Code;

(9) License to practice dietetics and limited permit to practice dietetics pursuant to
section 4759.06 of the Revised Code;

(10) Certificate to practice as an anesthesiologist assistant pursuant to section
4760.04 of the Revised Code;

(11) License to practice respiratory care and limited permit to practice respiratory
care pursuant to section 4761.05 of the Revised Code;

(12) Certificate to practice as an oriental medicine practitioner pursuant to section
4762.03 of the Revised Code;
License to practice as an acupuncturist pursuant to section 4762.03 of the Revised Code;

License to practice as a radiologist assistant pursuant to section 4774.04 of the Revised Code;

License to practice as a genetic counselor pursuant to section 4778.05 of the Revised Code;

Supervised practice license as a genetic counselor pursuant to section 4778.08 of the Revised Code;

Temporary expedited license for members of the military and spouses who are licensed in another jurisdiction pursuant to section 4743.04 of the Revised Code.

An application for a license or certificate that is ineligible for routine authorization under this rule will be referred to the board for determination of whether an applicant shall be granted a license. An affirmative vote of not fewer than six members of the board is necessary for issuance of a license or certificate pursuant to an application that is not eligible for routine authorization.

Notwithstanding the provisions of this rule, the board may designate the referral of any class of applications to the board for approval. The secretary, supervising member, or deputy director for licensure may refer any individual application to the board for approval.
Military provisions related to education and experience requirements for licensure.

(A) Definitions

For purposes of this chapter:

(1) "Armed forces" means any of the following:

(a) The armed forces of the United States, including the army, navy, air force, marine corps, and coast guard;

(b) A reserve component of the armed forces listed in paragraph (A)(1)(a) of this rule;

(c) The national guard, including the Ohio national guard or the national guard of any other state;

(d) The commissioned corps of the United States public health service;

(e) The merchant marine service during wartime;

(f) Such other service as may be designated by Congress; or

(g) The Ohio organized militia when engaged in full-time national guard duty for a period of more than thirty days.

(2) "Board" means the state medical board of Ohio.

(3) "Service member" means any person who is serving in the armed forces.

(4) "Veteran" means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces, who has been discharged under honorable conditions from the armed forces or who has been transferred to the reserve with evidence of satisfactory service.

(B) Education and service for eligibility for licensure.

(1) In accordance with section 5903.03 of the Revised Code, the following military programs of training, military primary specialties, and lengths of service are substantially equivalent to or exceed the educational and experience
requirements for licensure as a physician assistant and for a prescriber number:

(a) An individual serving in a military primary specialty listed in paragraph (B)(1)(b) of this rule must be a graduate of a physician assistant education program approved by the accreditation review commission on education for the physician assistant.

(b) Service in one of the following military primary specialties for at least two consecutive years while on active duty, with evidence of service under honorable conditions, including any experience attained while practicing as a physician assistant at a health care facility or clinic operated by the United States department of veterans affairs, may be substituted for a master's degree for eligibility for a license to practice as a physician assistant pursuant to section 4730.11 of the Revised Code and for a prescriber number pursuant to section 4730.15 of the Revised Code;

(i) Army: MOS 65D;
(ii) Navy: NOBC 0113;
(iii) Air force: AFSC 42G;
(iv) The national guard of Ohio or any state;
(v) Marine: Physician assistant services are provided by navy personnel;
(vi) Coast guard;
(vii) Public health service.

(2) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a cosmetic therapist or massage therapist.

(3) For purposes of section 5903.03 of the Revised Code, the board has determined
that:

(a) A diploma from a military medical school or military osteopathic medical school that at the time the diploma was issued was a medical school accredited by the liaison committee on medical education or an osteopathic medical school accredited by the American osteopathic association are substantially equivalent to the medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery;

(b) Military graduate medical education that is accredited by the accreditation council for graduate medical education is substantially equivalent to the graduate medical educational requirement for licensure to practice medicine and surgery or osteopathic medicine and surgery; and

(c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice medicine and surgery or osteopathic medicine and surgery.

(4) For purposes of section 5903.03 of the Revised Code, the board has determined that:

(a) A degree from a military college of podiatric medicine and surgery that at the time the degree was granted was a college of podiatric medicine and surgery accredited by the council on podiatric medical education is substantially equivalent to the medical educational requirement for licensure to practice podiatric medicine and surgery;

(b) Military postgraduate training in a podiatric internship, residency, or clinical fellowship program accredited by the council on podiatric medicine is substantially equivalent to the graduate medical educational requirement for licensure to practice podiatric medicine and surgery; and

(c) There are no military primary specialties or lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure to practice podiatric medicine and surgery.

(5) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or
lengths of service that are substantially equivalent to or that exceed the educational and experience requirements for licensure as a dietitian.

(6) For purposes of section 5903.03 of the Revised Code, the board recognizes respiratory care educational programs offered by branches of the United States military that have been issued provisional accreditation, initial accreditation, continuing accreditation or other accreditation status conferred by the commission on accreditation for respiratory care (CoARC) or their successor organization that permits respiratory care programs offered by the United States military to continue to enroll and/or graduate students.

(7) For purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, and lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as an acupuncturist or oriental medicine practitioner.

(8) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a radiologist assistant.

(9) For the purposes of section 5903.03 of the Revised Code, the board has determined that there are no military programs of training, military primary specialties, or lengths of service that are substantially equivalent to or exceed the educational and experience requirements for licensure as a genetic counselor.
General procedures in impairment cases.

(A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, or division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, it may compel the individual to submit to a mental or physical examination, or both.

(1) Such examinations shall be undertaken by an approved treatment provider designated by the board.

(2) The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired.

(3) Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.

(B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, or division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, the following general pattern of action shall be followed:

(1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.

(a) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (B)(6) of section 4762.13 of the Revised Code, division (B)(26) of section 4774.13 of the Revised Code, or division (B)(6) of section 4778.14 of the Revised Code, unless other investigation produces reliable,
substantial, and probative evidence demonstrating impairment.

(b) If the examination or examinations disclose impairment, or if the board has other reliable, substantial and probative evidence demonstrating impairment, the board shall initiate proceedings to suspend the license or deny the applicant. The board may issue an order of summary suspension as provided in division (G) of section 4730.25 of the Revised Code, division (G) of section 4731.22 of the Revised Code, division (H) of section 4759.07 of the Revised Code, division (G) of section 4760.13 of the Revised Code, or division (G) of section 4762.13 of the Revised Code, division (G) of section 4774.13 of the Revised Code, or division (H) of section 4774.14 of the Revised Code.

(2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:

(a) The individual has relapsed during or following treatment;

(b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program;

(c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance.

(3) Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's license certificate. Such demonstrations shall include but shall not be limited to the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed all required treatment, as follows:

(i) Except as provided in paragraph (B)(3)(a)(ii) of this rule, the required treatment shall include inpatient or residential treatment that extends a minimum of twenty-eight days with the following exception: If the individual has previously completed an inpatient
or residential treatment program of at least twenty-eight days and maintained sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.

(ii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who does not meet the criteria set forth in paragraph (B)(3)(iii) of this rule, the required treatment shall include intensive outpatient treatment meeting the requirements of paragraph (A)(13) of rule 4731-16-08 of the Administrative Code. The required intensive outpatient treatment must include a minimum of twenty treatment sessions over no less than five consecutive weeks with the following exception: If the massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist has previously completed an intensive outpatient treatment program of at least twenty treatment sessions over no less than five consecutive weeks and has maintained sobriety for at least one year following completion of that intensive outpatient treatment, the treatment required shall be determined by the treatment provider.

(iii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application for or while holding any license certificate issued by the board other than a license certificate to practice massage therapy, dietetics, respiratory care, as a radiologist assistant, or as a genetic counselor or cosmetic therapy, the required treatment shall be in compliance with paragraph (B)(3)(a)(i) of this rule.

(b) Evidence of continuing full compliance with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and with any consent agreement or order of the board then in effect;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for this determination. A physician who is the medical director of a treatment
provider approved under section 4731.25 of the Revised Code and this chapter of the Administrative Code may perform such an assessment without prior board approval.

(4) Subject to the provisions of paragraph (D) of this rule, the board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or after the board has issued a final order in lieu of a consent agreement.

(5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission by the individual to the board, for at least two years, of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.

(C) In cases where the board has initiated a disciplinary action for violations of any provisions of Chapter 4731., Chapter 4730., Chapter 4759., Chapter 4760., Chapter 4761., or Chapter 4774., or Chapter 4778. of the Revised Code or any of its rules in addition to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (A)(18) of section 4759.07 or the Revised Code, division (B)(6) of section 4760.13 of the Revised Code, division (A)(18) of section 4761.09 of the Revised Code, or division (B)(6) of section 4762.13 of the Revised Code, division (B)(6) of section 4774.13, or division (B)(6) of section 4778.14 of the Revised Code, the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:

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

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

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

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

(1) The relapse was the first ever suffered by the individual;

(2) The relapse occurred under circumstances that the board finds minimized the probability that the individual would either provide patient care while under influence of alcohol or drugs or leave patients without necessary care while under the influence of alcohol or drugs;

(3) The relapse involved a single occasion of use for less than one day;

(4) The individual self-reported the relapse within forty-eight hours in accordance with rule 4731-15-01 of the Administrative Code;

(5) The individual does not thereafter suffer another relapse;

(6) The board does not obtain evidence of acts, conduct or omissions that would support the imposition of discipline, apart from the relapse itself;

(7) The relapse does not lead to the individual being charged with any criminal offense;

(8) The individual reported the relapse to an approved treatment provider within forty-eight hours, submitted to evaluation as requested by the approved treatment provider, and obtained any additional treatment recommended;

(9) The individual suspended practice until the approved treatment provider reported in writing to the board that it had made a clear determination that the individual was capable of practicing according to acceptable and prevailing standards of care; and
(10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are not circumstances warranting the initiation of disciplinary action.
Examinations.

(A) Any examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4774.14 of the Revised Code in order to determine impairment, or any examination of an applicant for or a holder of a certificate issued under Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760., Chapter 4761., Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code performed by an approved treatment provider shall include all of the following:

1. Urine, hair screening or blood toxicology alcohol testing, or any combination both, with legal chain of custody and forensic capability protocol;

2. Comprehensive evaluation pertinent to the reasons for referral, including:
   
   (a) Complete medical history and physical examination;
   
   (b) Routine laboratory tests, to include complete blood count and liver function studies;
   
   (c) Psychiatric evaluation, except as in paragraph (A)(3)(b)(ii); and mental status examination;
   
   (d) Comprehensive biopsychosocial assessment; chemical use history; and

   (e) Corroborating interviews of at least two persons who are close to the individual;

   (f) Administration of at least two clinically approved substance use disorder assessment tools; and

3. One of the following assessment standards, as applicable:

   (a) Except as provided in paragraph (A)(3)(b) of this rule, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.
(b) If the individual is a massage therapist, dietitian, respiratory care profession, radiologist assistant, or genetic counselor or cosmetic therapist who does not meet the criteria set forth in paragraph (A)(3)(c) of this rule:

(i) In depth Outpatient assessment that meets the requirements of (A)(1) and (2), including use of a structured interview, by a physician, registered nurse or nurse practitioner who has specialized training in addiction medicine or treatment of addiction, or by a licensed independent chemical dependency counselor or licensed chemical dependency counselor III;

(ii) Routine laboratory tests, to include complete blood count and liver function studies;

(iii) Corroborating interviews of at least two persons who are close to the individual;

(iv) Administration of the "Beck Depression Inventory" and the "Hamilton Anxiety Survey;"

(v) Any other requirements as identified by the board or treatment provider. Psychiatric evaluation is not required in an examination administered under this paragraph unless the need for such an evaluation is identified by the board of the treatment provider.

(c) If the individual is a massage therapist, dietitian, respiratory care profession, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application for or while holding any certificate issued by the board, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.

(B) A diagnosis made by an approved treatment provider based on an examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4778.14 of the Revised Code shall be made solely for the purpose of providing evidence for use by the board. A licensee
or applicant who undergoes an examination ordered by the board but who refuses to authorize the treatment provider to release reports or information to the board shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence as provided in division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, or division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (G)(2) of section 4774.14 of the Revised Code.

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

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

(1) The drug toxicology screen shall be considered part of the examination.

(2) Refusal to submit to the drug toxicology screen immediately upon such request shall constitute failure to submit to a mental or physical examination ordered by the board and shall constitute an admission of the allegations against the individual, unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.

(E) An individual ordered by the board to an examination who refuses to authorize the treatment provider to contact any person identified by the treatment provider as being appropriate for the purpose of conducting a corroborating interview as part of the examination shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered into without the taking of testimony or presentation of evidence.
Criteria for approval.

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

(1) The philosophy and individualized treatment plan of the program is based on the disease concept.

(2) The chemical dependency model of treatment is based on a twelve-step program such as Alcoholics Anonymous.

(3) The program provides specialized medical and nursing care during detoxification and appropriate health care professionals during treatment phase.

(4) The evaluation process is an objective, measurable program which uses tools and testing procedures to identify patterns, progression, and stages of recovery at appropriate times in the treatment program. The evaluation shall also emphasize patient self-assessment.

(5) The treatment provider has a network of referral agencies or professionals which meets the needs of the practitioner and significant others in the event that the needs go beyond the program’s expertise or available facilities.

(6) The treatment provider has a variety of treatment plan options including inpatient detoxification treatment, inpatient or residential treatment, and outpatient services.

(7) The involvement and treatment of family and significant others is provided.

(8) The provider gives each patient who has been diagnosed as in need of treatment a written list of approved treatment providers from whom indicated inpatient or residential treatment, outpatient treatment, or aftercare can be obtained.

(9) The provider holds certification as an alcoholism program or drug treatment program by the Ohio Department of Alcohol and Drug Addiction Services, or if located outside Ohio, holds appropriate certification or registration with an agency exercising a similar function in the state in which it is located.

(10) The provider provides advocacy services only at no cost to the patient, or provides such services only after obtaining the signature of the patient acknowledging that he or she has been notified:
(a) That advocacy is not treatment;

(b) That nothing in Chapter 4730., 4731., 4759., 4760., or 4761., or 4762., 4774., or 4778. of the Revised Code or this chapter of the Administrative Code requires a practitioner to obtain aftercare, monitoring or advocacy from the provider of inpatient or extended residential treatment or intensive outpatient treatment, as applicable; and

(c) That the practitioner's refusal to obtain aftercare, monitoring, or advocacy services from the provider of inpatient treatment or intensive outpatient treatment, as applicable, shall not constitute grounds to report to the board so long as the practitioner demonstrates that the practitioner has contracted with another approved treatment provider to receive any further recommended treatment.

(11) The provider has the capability of making an initial examination to determine what type of treatment an impaired practitioner requires.

(12) The provider requires that each patient who is subject to the jurisdiction of the board, who is determined to be impaired, except as provided in paragraph (A)(13) of this rule, complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The exceptions in paragraph (C) of this rule notwithstanding, the provider must personally provide the required inpatient or residential treatment and the assessment or must confirm that another approved treatment provider has provided the inpatient or residential treatment and the assessment before providing any outpatient treatment or aftercare. The inpatient or residential treatment program must have a continuing inpatient or residential patient census sufficient to provide an appropriate treatment milieu for patients receiving treatment in the inpatient or residential setting. This paragraph shall not apply to a patient who has previously completed an inpatient or residential treatment program of at least twenty-eight days if the patient was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment.

(13) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who is determined to be impaired and who does not meet the criteria set forth in paragraph (A)(14) of this rule, complete a minimum of twenty treatment
sessions over no less than five consecutive weeks of intensive outpatient treatment, after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The intensive outpatient treatment must include:

(a) Witnessed toxicology screens with legal chain of custody and forensic capability performed weekly at therapy sessions;

(b) At least three twelve-step meetings weekly;

(c) All treatment sessions lasting a minimum of three hours, not including time spent watching videos or participating in twelve-step meetings;

(d) Family education lasting at least two hours weekly.

(14) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor or cosmetic therapist who was investigated by the board for possible impairment as part of a previous application or while holding any certificate by the board other than a certificate to practice as a massage therapist, dietitian, respiratory care professional, radiologist assistant or genetic counselor or cosmetic therapist, complete the inpatient or residential treatment required in paragraph (A)(12) of this rule.

(15) If the provider did not hold approval under this chapter prior to January 1, 2001, the provider is accredited by the joint commission on accreditation of health care organizations or by CARF (commission commission on accreditation of rehabilitation facilities.)

(B) A treatment provider which does not meet the criteria of paragraph (A)(1) or (A)(2) of this rule may nonetheless be considered for approval if it establishes by evidence acceptable to the board that its philosophy, individualized treatment plan, or model of treatment is based on current scientific advances in the field of chemical dependency, and that its success in treatment is comparable or superior to that obtained by treatment providers which meet all the criteria of paragraph (A) of this rule.

(C) A treatment provider that does not meet the criteria of paragraph (A)(3) or (A)(6) of this rule because it does not offer all phases of treatment may nonetheless be considered for approval if it meets both of the following requirements.

(1) If it does not offer detoxification treatment, its policies and procedures are
structured to assure that all patients who enter treatment have completed detoxification where detoxification is medically indicated.

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

TO: Betty Montgomery, President
    Members, State Medical Board of Ohio

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Budget Update-Light Based Medical Devices-Section 4731.33

DATE: July 8, 2021

HB 110, the biennial budget bill was signed by Governor DeWine on July 1, 2021. The bill included a provision in Section 4731.33, ORC, which addresses the delegation of light based medical devices. This provision will become effective September 30, 2021. A copy of the provision is attached for your review.

The statutory language includes the definitions for the following terms that are identical to or substantially similar to those in proposed rule 4731-18-01:

- Physician
- On-site supervision
- Off-site supervision
- Direct physical oversight

The statutory language does not include the definitions for the following terms that are contained in proposed rule 4731-18-01:

- Phototherapy
- Photodynamic therapy
- Ablative dermatologic procedure
- Non-Ablative dermatologic procedure
- Delegation
- Vascular laser

The statutory language does not include any of the provisions in proposed rules 4731-18-02, 4731-18-03(A), and 4731-18-04, OAC.

The statutory language focuses on the delegation of light based medical devices for hair removal in proposed rule 4731-18-03(B)-(H), OAC.

The most significant difference between proposed rule 4731-18-03 and the new statutory language is that it exempts the following individuals from the education and training requirements, including observed procedures with direct physical oversight of the physician:

- previously licensed cosmetic therapists if authorized to use light based medical devices,
registered nurses,
licensed practical nurses,
physician assistants and
persons who had been using light based medical devices for hair removal for at least 2 years through lawful delegation

No written certification that the delegate has sufficient training is required in the statute as in proposed rule 4731-18-03(B)(7)(e) and (f).

Since the emergency rule 4731-18-03 expires on August 8, 2021 and the statutory provisions do not become effective until September 30, 2021, I recommend that the Board move forward with the final adoption of the light based medical device rules to be effective July 31, 2021. Then we will immediately begin work on amending rules 4731-18-01 and 4731-18-03 to address the changes. The statutory changes will supersede the rules where there is a conflict.
educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

(P) The board shall not refuse to issue a license to an applicant because of a conviction, plea of guilty, judicial finding of guilt, judicial finding of eligibility for intervention in lieu of conviction, or the commission of an act that constitutes a criminal offense, unless the refusal is in accordance with section 9.79 of the Revised Code.

Sec. 4731.33. (A) As used in this section:

(1) "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 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.

(2) "Physician" means a person authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under this chapter.

(3) "On-site supervision" means the supervising physician is physically in the same location as the delegate during the use of a light-based medical device, but does not require the physician to be in the same room. "On-site supervision" includes the supervising physician's presence in the same office suite as the delegate during the use of the device.

(4) "Off-site supervision" means the supervising physician is continuously available for direct communication with the cosmetic therapist during the use of a light-based medical device.

(5) "Direct physical oversight" means the supervising physician is in the same room directly observing the delegate's use of the light-based medical device.

(B) A physician may delegate the application of light-based medical devices for the purpose of hair removal only if all of 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 before any continuation of treatment, 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;

(b) A person who was licensed as a cosmetic therapist under Chapter 4731. of the Revised Code on April 11, 2021;

(c) A person who has completed a cosmetic therapy course of instruction for a minimum of seven hundred fifty 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;

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

(C) For delegation to a physician assistant, the delegation must meet the requirements of section 4730.21 of the Revised Code.

(D)(1) For delegation to a person described under division (B)(5)(b) or (c) of this section, the physician shall ensure that the person to whom the delegation is made has received adequate education and training to provide the level of skill and care necessary, including all of the following:

(a) The person has completed eight hours of basic education that includes the following topics:

(i) Light-based procedure physics;

(ii) Tissue interaction in light-based procedures;
(iii) Light-based procedure safety, including use of proper safety equipment;

(iv) Clinical application of light-based procedures;

(v) Preoperative and postoperative care of light-based procedure patients;

(vi) Reporting of adverse events.

(b) The person has observed fifteen procedures for each specific type of light-based medical device procedure for hair removal that the person will perform under the delegation.

(c) The person shall perform at least twenty procedures under the direct physical oversight of the physician on each specific type of light-based medical device procedure for hair removal delegated.

(2) For purposes of division (D)(1)(b) of this section, the procedures observed shall be performed by a physician who uses the specific light-based medical device procedure for hair removal in the physician's normal course of practice and expertise.

(3) For purposes of division (D)(1)(c) of this section, the physician overseeing the performance of these procedures shall use this specific light-based medical device procedure for hair removal within the physician's normal course of practice and expertise.

(4) Each delegating physician and delegate shall document and retain satisfactory completion of training required under division (D) of this section. The education requirement in division (D)(1)(a) of this section shall be completed only 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 divisions (D)(1)(b) and (c) of this section shall 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) The following delegates are exempt from the education and training requirements of division (D)(1) of this section:

(1) A person who, before the effective date of this section, has been applying a light-based medical device for hair removal for at least two years through a lawful delegation by a physician;

(2) A person described under division (B)(5)(b) of this section if the person was authorized to use a light-based medical device under the cosmetic therapist license;

(3) A person described in division (B)(5)(a) or (d) of this section.

(F) For delegation to a person under division (B)(5)(b), (c), or (d) of this section, the physician shall provide on-site supervision at all times that the person to whom the delegation is made is applying the light-based medical device.

A physician shall not supervise more than two delegates under division (B)(5)(b), (c), or (d) of this section at the same time.

(G)(1) Notwithstanding division (F) of this section, a 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 is a cosmetic therapist who meets all of the following criteria:

(a) 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;

(b) The course consisted of at least fifty hours of training, at least thirty hours of which was clinical experience,
(c) The cosmetic therapist has worked under the on-site supervision of the delegating physician for 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.

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

(H) A delegate under this section 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.

(I) No physician shall fail to comply with division (A), (B), (G), or (H) of this section. A violation of this division constitutes 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, under division (B)(6) of section 4731.22 of the Revised Code.

(J) No physician shall delegate the application of light-based medical devices for the purpose of hair removal to a person who is not listed in division (B)(5) of this section. A violation of this division constitutes violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate section 4731.41 of the Revised Code for purposes of division (B)(20) of section 4731.22 of the Revised Code.

(K) No cosmetic therapist to whom a delegation is made under
division (B)(5)(b) or (c) of this section shall fail to comply with division (G) or (H) of this section. A violation of this division constitutes the unauthorized practice of medicine pursuant to section 4731.41 of the Revised Code.

(L) No physician assistant shall fail to comply with division (H) of this section. A violation of this division constitutes 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, for purposes of division (B)(19) of section 4730.25 of the Revised Code.

Sec. 4731.90. A physician who has established a protocol that meets the requirements of section 4729.284 of the Revised Code and the rules adopted under that section may authorize one or more pharmacists to use the protocol for the purpose of dispensing nicotine replacement therapy under section 4729.284 of the Revised Code.

Sec. 4735.05. (A) The Ohio real estate commission is a part of the department of commerce for administrative purposes. The director of commerce is ex officio the executive officer of the commission, or the director may designate any employee of the department as superintendent of real estate and professional licensing to act as executive officer of the commission.

The commission and the real estate appraiser board created pursuant to section 4763.02 of the Revised Code shall each submit to the director a list of three persons whom the commission and the board consider qualified to be superintendent within sixty days after the office of superintendent becomes vacant. The director shall appoint a superintendent from the lists submitted by the commission and the board, and the superintendent shall
MEMORANDUM

TO: Betty Montgomery, President
    Members, State Medical Board of Ohio

FROM: Nathan T. Smith, Senior Legal and Policy Counsel

DATE: July 7, 2021

RE: Telemedicine Frequently Asked Questions

At its June 9, 2021 meeting, the Medical Board agreed to resume enforcement of its laws and rules requiring in-person patient visits ninety (90) days after the termination of the state declaration of emergency for Ohio. Subsequently on June 18, 2021, Governor DeWine ended the state of emergency. Based on this, the Medical Board will resume enforcement on September 17, 2021. The provision of medical care through telemedicine has expanded and the Board has and will continue to receive a variety of questions regarding telemedicine in Ohio.

The attached Telemedicine Frequently Asked Questions seeks to provide guidance to physicians, physician assistants, and patients about: (1) the effect of the Covid-19 pandemic state of emergency on telemedicine in Ohio; (2) the effect of the resumption of enforcement of Board laws and rules on the provision of medical care through telemedicine in Ohio; (3) licensure and other general questions related to telemedicine in Ohio; and (4) the specific laws and rules affecting the provision of medical care through telemedicine in Ohio.

Action Requested: Review and approve the attached Telemedicine Frequently Asked Questions for publication on the Board’s website.
Telemedicine Frequently Asked Questions

Effect of the COVID-19 Pandemic State of Emergency on Telemedicine in Ohio

Q1: What did the Medical Board do at the beginning of the Covid-19 pandemic regarding enforcement of its laws and rules requiring in-person patient visits in Ohio?
A: On March 18, 2020, the Medical Board issued the following guidance to licensees: Effective March 9, 2020 until Executive Order 2020-01D (declaration of a state of emergency for Ohio for the COVID-19 pandemic) expires, providers can use telemedicine in place of in person visits, without enforcement from SMBO. This includes, but is not limited to:

- Prescribing controlled substances
- Prescribing for subacute and chronic pain
- Prescribing to patients not seen by the provider
- Pain management
- Medical marijuana recommendations and renewals
- Office-based treatment for opioid addiction

Providers must document their use of telemedicine and meet minimal standards of care. The Medical Board will provide advance notice before resuming enforcement of the above regulations when the state emergency orders are lifted.

Q2: What is the Medical Board’s recent updated guidance on its laws and rules requiring in-person patient visits?
A: At its June 9, 2021 meeting, the Medical Board agreed to resume enforcement of its laws and rules requiring in-person patient visits 90 days after the termination of the state of emergency for Ohio. The purpose of this announcement was to give advance notice to hospitals, practice groups, physicians, physician assistants, and most importantly patients.

Q3: Since Governor DeWine ended the state of emergency on June 18, 2021, when will the Medical Board resume enforcement of its laws and rules requiring in-person patient visits?
A: The Medical Board will resume enforcement on September 17, 2021.

Q4: What is the effect of Ohio ending its state of emergency before the end of the President’s declaration of a national emergency and/or the U.S. Department of Health and Human Services’ declaration of a public health emergency for COVID-19?
A: While the federal government has temporarily relaxed requirements or stayed enforcement of many laws and rules related to the provision of telemedicine, it has also still required providers to comply with state law. If the federal emergency has not ended before enforcement of state telemedicine laws and rules resumes on September 17, 2021, physicians and physician assistants who are providing medical care to a patient situated in Ohio must still comply with the Ohio laws and rules governing telemedicine.

Q5: What does it mean for the Medical Board to resume enforcement regarding the provision of telemedicine in Ohio?
A: It means that providers must follow the existing laws and rules governing in-person visits for patients. Beginning again on September 17, 2021, if a provider is licensed by the State Medical Board of Ohio and fails to follow the laws and rules governing in-person patient visits, they could be subject to a disciplinary action by the State Medical Board of Ohio. If the provider is not licensed in Ohio, that provider could be subject to civil, criminal, and/or administrative penalties for the unlicensed practice of medicine in Ohio.

Q6: Will the Medical Board discipline licensees for conduct involving failure to follow rules requiring in-person patient visits for the time period between March 9, 2020 to September 17, 2021?
The Medical Board will not retroactively enforce these rules. However, a licensee could be disciplined for conduct involving violations of other Medical Board laws and rules during this time period.

Licensure and other general questions

Q7: To what professions do the Medical Board laws and rules requiring in-person patient visits apply?
A: The current Medical Board laws in Chapter 4731 of the Revised Code (R.C.) and rules in Chapters 4730 and 4731 of the Ohio Administrative Code (OAC) governing in-person patient visits apply to physicians (including training certificate holders) and physician assistants licensed in Ohio.

Q8: Why do these FAQs (except those involving medical marijuana) include physician assistants in the questions and answers when the language of most of the relevant rules only states “physician”?
A: The rules are applicable to physician assistants because OAC rule 4730-1-07 states that the provisions of all rules in Chapters 4731-11 and 4731-29 of the Ohio Administrative Code are applicable to physician assistants. In addition, R.C. 4730.42 provides that a supervising physician shall not grant physician-delegated prescriptive authority to a physician assistant in a manner that exceeds the supervising physician's prescriptive authority.

Q9: Do I have to apply for a separate telemedicine license?
A: No, there is not a separate license for telemedicine in Ohio. Specific to licensees of the Medical Board, in order to practice telemedicine in Ohio, the provider must be licensed in Ohio as a physician or physician assistant.

Q10: Do I have to be physically located in Ohio at the time that I am seeing a patient located in Ohio via telemedicine?
A: If a physician or physician assistant is licensed in Ohio, that healthcare provider may provide telemedicine that is compliant with Medical Board laws and rules to a patient located in Ohio while the healthcare provider is located in another state of the United States.

Q11: I am an Ohio physician that wants to provide telemedicine to patients located in another state. What regulations does the State Medical Board of Ohio have on this out-of-state practice?
A: Because the practice of medicine is deemed to occur in the state in which the patient is located, the laws of the other state where the patient is located regulate this practice of medicine. Most states, including Ohio, require physicians to be licensed in that state to perform telemedicine. Ohio licensees who want to practice medicine via telemedicine to treat or diagnose patients located in another state should check with that other state’s licensing board.
Laws and rules for telemedicine in Ohio

Q12: What are the telemedicine laws and rules that the Medical Board enforces as to its physician and physician assistant licensees?
A: To protect the health and safety of patients, the Medical Board has laws and rules that require an initial and/or periodic in-person patient visit for those medical visits involving the prescribing of drugs. Generally, there is no telemedicine for initial patient visits with a physician or physician assistant involving prescribing as OAC rule 4731-11-09 prohibits physicians from prescribing controlled substances or non-controlled substances to a person on whom the physician has never conducted a physical examination with some exceptions. Also, visits that involve prescribing of specific types of controlled drugs also have initial and periodic in-person visit requirements. These are explained in FAQs 22, 23, and 24.

Q13: What are the laws and rules that apply to physicians and physician assistants not licensed in Ohio who want to provide telemedicine to patients located in Ohio?
A: R.C. 4731.34 provides that the practice of medicine in Ohio includes both the practice of medicine that occurs in person or “through the use of any communication, including oral, written, or electronic communication.” If a physician or physician assistant located in Ohio or in another state wants to provide medical care to patients in Ohio via telemedicine, that physician or physician assistant must obtain an Ohio physician or physician assistant license. In almost all cases, a physician or physician assistant that is not licensed in Ohio cannot provide telemedicine to a patient located in Ohio as that is the unlicensed practice of medicine prohibited by Ohio law. However, R.C. 4731.36(A) provides two limited exceptions:

“(3) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein when providing consultation to an individual holding a license to practice issued under this chapter who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation, if one of the following applies:
(a) The physician or surgeon does not provide consultation in this state on a regular or frequent basis.
(b) The physician or surgeon provides the consultation without compensation of any kind, direct or indirect, for the consultation.
(c) The consultation is part of the curriculum of a medical school or osteopathic medical school of this state or a program described in division (A)(2) of section 4731.291 of the Revised Code.

(4) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein and provided services to a patient in that state or territory, when providing, not later than one year after the last date services were provided in another state or territory, follow-up services in person or through the use of any communication, including oral, written, or electronic communication, in this state to the patient for the same condition.”

Q14: What is the standard of care that applies to telemedicine?
A: The standard of care for telemedicine must be consistent with the standard of care for in-person medical care. A physician or physician assistant can face disciplinary action for “a departure from, or the failure to conform to, minimal standards of care of similar practitioners for updated licensure and state law information. Information on the telemedicine laws, rules, and policies of other states may be accessed at the Federation of State Medical Boards ("FSMB") website.
under the same or similar circumstances, whether or not actual injury to a patient is established.” R.C. 4731.22(B)(6) and R.C. 4730.25(B)(19).

Q15: For medical treatment that does not involve prescribing or one of the laws or rules discussed in the FAQs, how does the Medical Board’s resumption of enforcement of telemedicine laws and rules affect physicians, physician assistants, and patients?
A: The physician or physician assistant is responsible for communicating with the patient as to whether telemedicine is appropriate in a given situation knowing that the standard of care must be met regardless of if the medical diagnosis or treatment is given in-person or via telemedicine. This standard of care includes but is not limited to:

(1) informing patient about telemedicine services provided and obtaining informed consent from patient;
(2) compliance with federal and state laws and regulations related to the privacy of patient health information;
(3) documentation of all telemedicine services provided including:
   (a) the full name and license number of the licensee;
   (b) verification of patient identity for the appropriate provision of telemedicine;
   (c) complete medical record of telemedicine visit including but not limited to patient history, patient exam, testing, and treatment; and
   (d) referral of patients when medical services cannot be provided by telemedicine to another Ohio licensed medical provider who practices in an area of Ohio that patient can access for in-person medical services.

The medical provider is also responsible for training staff in the competent use of the appropriate telemedicine technology.

Visits involving prescribing a drug that is not a controlled substance

Q16: What are the rules for telemedicine related to a medical visit involving prescribing a drug that is not a controlled substance?
A: OAC rule 4731-11-09(B) states: Except as provided in paragraph (C) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any prescription drug that is not a controlled substance to a person on whom the physician has never conducted a physical examination. Paragraph (C) allows a physician to prescribe, personally furnish or otherwise provide a non-controlled substance prescription drug to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician if the physician complies with all of the following requirements:

(1) The physician shall establish the patient’s identity and physical location;
(2) The physician shall obtain the patient’s informed consent for treatment through a remote examination;
(3) The physician shall request the patient’s consent and, if granted, forward the medical record to the patient’s primary care provider or other health care provider, if applicable, or refer the patient to an appropriate health care provider or health care facility;
(4) The physician shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care, which may include portions of the evaluation having been conducted by other Ohio licensed healthcare providers acting within the scope of their professional license;
(5) The physician shall establish or confirm, as applicable, a diagnosis and treatment plan, which includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment;

(6) The physician shall document in the patient's medical record the patient's consent to treatment through a remote evaluation, pertinent history, evaluation, diagnosis, treatment plan, underlying conditions, any contraindications, and any referrals to appropriate health care providers, including primary care providers or health care facilities;

(7) The physician shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider, or health care facility in accordance with the minimal standards of care;

(8) The physician shall make the medical record of the visit available to the patient;

(9) The physician shall use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in-person visit.

Q17: For prescribing non-controlled substance prescription drugs, does rule 4731-11-09 specify what type of telemedicine technology must be used?
A: The rule states that a physician shall “use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in-person visit.”

Visits involving prescribing a drug that is a controlled substance

Q18: What are the rules for telemedicine for a medical visit involving prescribing a drug that is a controlled substance?
A: The first applicable rule is OAC rule 4731-11-09(A) which states that “[e]xcept as provided in paragraph (D) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any controlled substance to a person on whom the physician has never conducted a physical examination.” There are additional rules addressed in FAQs 22, 23, and 24 regarding prescribing specific types of controlled substance prescription drugs.

Q19: What are the exceptions in which an Ohio licensed prescriber may prescribe a drug that is a controlled substance to a person on whom the physician has not conducted a physical examination and who is at a location remote from the physician?
A: Paragraph (D) of OAC rule 4731-11-09 lists the limited exceptions in which an Ohio licensed prescriber may prescribe a drug that is a controlled substance to a patient whom they have not personally physically examined and who is at a different location than the prescriber:

(1) The person is an active patient of an Ohio licensed physician or other health care provider who is a colleague of the physician, and the drugs are provided pursuant to an on call or cross coverage arrangement between them and the physician complies with all steps of OAC rule 4731-11-09(C). An active patient is defined as one that within the previous twenty-four months the physician or physician assistant being cross-covered conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine.

(2) The patient is physically located in a hospital or clinic registered with the U.S. drug enforcement administration (“DEA”) to personally furnish or provide controlled substances, when the patient is being treated by an Ohio licensed physician or other healthcare provider acting in the usual course of their practice and within the scope of their professional license and who is registered with the DEA to prescribe or otherwise provide controlled substances in Ohio.
(3) The patient is being treated by, and in the physical presence of, an Ohio licensed physician or healthcare provider acting in the usual course of their practice and within the scope of their professional license, and who is registered with the DEA to prescribe or otherwise provide controlled substances in Ohio.

(4) The physician has obtained from the administrator of the DEA a special registration to prescribe or otherwise provide controlled substances in Ohio.

(5) The physician is the medical director, hospice physician, or attending physician for a hospice program licensed pursuant to Ohio Revised Code Chapter 3712 and both of the following conditions are met: (a) the controlled substance is being provided to a patient who is enrolled in that hospice program, and (b) the prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

(6) The physician is the medical director of, or attending physician at, an institutional facility (as defined in OAC rule 4729-17-01) and both of the following conditions are met: (a) the controlled substance is being provided to a person who has been admitted as an inpatient to or is a resident of an institutional facility, and (b) the prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

Q20: What are the telemedicine technology requirements for a physician that prescribes a drug that is a controlled substance to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician?  
A: Per federal law that has remained unchanged during the pandemic, the telemedicine communication in a patient visit involving prescribing a prescription drug that is a controlled substance must be conducted by a telecommunication system that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or physician assistant. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system. R.C. 4731.74 requires that the prescribing of a prescription drug that is a controlled substance to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician must comply with federal law requirements.

Q21: In a group practice where one or more of the group practice physicians or physician assistants have examined the patient, can any of the physicians and PAs that have examined the patient within the past 24 months prescribe drugs that are controlled or non-controlled substances for the patient by telemedicine without having to follow all of the requirement of OAC rule 4731-11-09?  
A: To fall outside of the requirements of OAC rule 4731-11-09, a physician or physician assistant must have sufficient familiarity with the patient such that the physician or PA must have examined the patient previously and become familiar with the patient’s specific condition for which the medication is being prescribed. If the physician or PA has examined the patient previously for a different problem or condition than the specific condition for which the medication is being prescribed, that prescriber would have to comply with the requirements of OAC rule 4731-11-09.

Q22: What are the specialized requirements for prescribing drugs that are controlled substances?  
A: OAC rule 4731-11-03(B): Schedule II Controlled substance stimulants: A physician may use a schedule II controlled substance stimulant for only specified purposes in the rule if the physician performs an appropriate physical examination of the patient.
OAC rule 4731-11-14(B)(1) and (G): Prescribing for subacute and chronic pain: Before prescribing an opioid analgesic for subacute or chronic pain, the physician shall complete and document in the patient record assessment activities to assure the appropriateness and safety of the medication including a physical examination. If the treatment includes opioids at doses at or above the average of 50 MED per day, the physician shall, every three months, complete an assessment which includes a physical examination.

OAC rule 4731-29-01(E)(6)(a)(i): Standards and procedures for the operation of a pain management clinic: Patient records must contain information regarding physical examination.

OAC rule 4731-33-01(B)(1)(e): Office-based treatment for opioid addiction: Physician must perform an assessment including an appropriate physical examination. This assessment includes the following testing: urine drug screen or oral fluid drug testing; pregnancy test for women of childbearing age and ability; HIV, Hepatitis B & C tests, and consideration for screening for tuberculosis and sexually transmitted diseases in patients with known risk factors. Also, OAC rule 4731-33-01(B)(2) allows that “for other than the toxicology tests for drugs and alcohol, appropriate history, substance abuse history, and pregnancy test, the physician may satisfy the assessment requirements by reviewing records from a physical examination and laboratory testing of the patient that was conducted within a reasonable period of time prior to the visit.”

OAC rule 4730-4-03(B): Office-based treatment for opioid addiction: Rule includes the same requirements for physician assistant assessment and physical examination of patient as for physicians in OAC rule 4731-33-03.

Q23: What are the specialized requirements for prescribing weight loss drugs?

A: OAC rule 4731-11-04(B)(2)(b) and (C)(1): Controlled substances: Utilization of short term anorexiants for weight reduction: Before initiating treatment for weight reduction utilizing schedule III or IV controlled substances, the physician shall perform an appropriate physical examination of the patient. When using schedule III or IV controlled substances, the physician shall meet face-to-face with the patient at a minimum of every thirty days.

OAC rule 4731-11-04.1(A)(1)(b) and (B)(1): Controlled substances: utilization for chronic weight management: Before initiating treatment utilizing any controlled substance anorexiant for the purposes of chronic weight management, the physician shall perform a physical examination of the patient. A physician shall meet face-to-face with the patient for the initial visit and at least every thirty days during the first three months of treatment.

Q24: What are the specialized requirements for recommending treatment with medical marijuana to a patient?

A: R.C. 4731.30 requires a physician to obtain a certificate to recommend from the Medical Board before a physician may recommend treatment with medical marijuana to a patient. Further, R.C. 4731.30(C)(1)(b)(i) requires a physician to conduct an in-person physical examination of a patient to establish a bona fide physician-patient relationship to issue a recommendation for treatment with medical marijuana to the patient. In addition, R.C. 4731.30(D)(2) requires a physician to also conduct a physical examination for the issuance of a
recommendation for treatment with medical marijuana to the patient after the expiration of the original recommendation and three renewals.

**OAC rule 4731-32-03(A) and (E) Standard of Care – Medical Marijuana** The physician shall establish and maintain a bona fide physician-patient relationship with the patient for the provision of medical services that is established in an in-person visit that complies with this rule and for which there is an expectation that the physician will provide care to the patient on an ongoing basis. Physician shall be available to provide follow-up care and treatment to the patient, including physical examinations relevant to the patient’s condition to determine the efficacy of medical marijuana in treating the patient’s qualifying medical condition.

**OAC rule 4731-32-03(B)(9): Standard of Care - Medical Marijuana:** The physician shall create and maintain a medical record that documents the provision of medical services, including the performance of a physical examination relevant to the patient’s current medical condition.

**Note:** There are more situation specific FAQs regarding OAC rule 4731-11-09 [here](#).
Legislative Update: July 14, 2021

Bills of high interest or with significant activity since the last board meeting:

SB 6 – Join Interstate Medical Licensure Compact (Sen. Roegner and Sen. Steve Huffman)

To enter into the Interstate Medical Licensure Compact

Areas of Interest:

- Requires entrance into the Interstate Medical Licensure Compact (IMLC).
- Model compact language must be adopted as written and cannot be amended though amendments that do not require changes to the actual membership contract may be considered by the IMLC.
- Several stakeholders have offered testimony in support of this legislation including OSMA and OHA.
- The policy, legal and licensing team continue to research this issue. Several other states with introduced legislation and passed legislation were contacted when this language was introduced in the last General Assembly.
- Director Loucka and Chelsea Wonski attended an interested party meeting hosted by the bill sponsors and additional meetings with the sponsors are planned.
- Amendment request from the Board was accepted as part of the bill. The amendment included an extension of implementation and an appropriation for technology modification and staffing.

Board Position: Interested Party


SB 131 – Occupational Licensing (Reciprocity) (Sen. Roegner and Sen. McColley)

To require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances.

Areas of Interest:

- Requires automatic licensure of out of state applicants that meet certain criteria.

Board Position: Neutral


To make changes to the laws governing massage establishments and massage therapy.

Areas of Interest:

- Requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board.

Board Position: Neutral


HB 110 – State Operating Budget (Rep. Oelslager)

Creates appropriations for FY 2022-2023.

Areas of Interest:

- The Medical Board budget request was granted in the first version of the bill and remained in the final version.
- Director Louck provided testimony before the House Finance Subcommittee on Health and Human Services on behalf of the Board regarding the relevant budget items on 2/18/2021.
- Director Louck provided testimony before the Senate Health committee on behalf of the Board regarding the relevant budget items on 4/27/2021.

Board Position: Support


HB 122 – Telehealth (Rep. Fraizer)

To establish and modify requirements regarding the provision of telehealth services.

Areas of Interest:

- Permits specified health care professionals to provide telehealth services.
- Requires telehealth services provided by health care professionals to be done so according to specified conditions and standards.
- Permits certain health care licensing boards to adopt rules as necessary to carry out the bill's provisions regarding telehealth services provided by health care professionals.

Board Position: Interested party

Bills that continue to be monitored but have not seen significant activity since the last board meeting:

**SB 4 – Public Records (Sen. Roegner)**

*To exempt personal info of certain persons from public records law.*

**Areas of Interest:**

- Includes emergency service telecommunicators and certain Ohio National Guard members as individuals whose residential and familial information is exempt from disclosure under the Public Records Law.

**Board Position:** Neutral

**Status:** Passed out of the Senate 2/17/2021. Senate concurred in House amendments 5/26/2021.

**SB 9 – Regulations (Sen. McColley and Sen. Roegner)**

*To reduce regulatory restrictions in administrative rules.*

**Areas of Interest:**

- Requires certain agencies to reduce the number of regulatory restrictions in their administrative rules.
- This applies to administrative agencies only and does not currently impact the Medical Board.

**Board Position:** Neutral

**Status:** Passed out of the Senate 3/10/2021. First House hearing 5/20/2021.

**SB 48 – Cultural Competency (Sen. Maharath and Sen. Antonio)**

*To require certain health care professionals to complete instruction in cultural competency.*

**Areas of Interest:**

- Requires certain health care professionals to complete instruction in cultural competency and provide proof of completion at initial application for licensure and at renewal.
- Includes: dentists, nurses, pharmacists, physicians, psychologists, and social workers.

**Board Position:** Neutral

**Status:** Introduced in the Senate 2/3/2021. First Senate Health hearing 6/16/2021.
SB 55 – Massage Therapy (Sen. Brenner) (companion bill HB 81)

To make changes to the laws governing massage establishments and massage therapy.

Areas of Interest:

- Requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board.

Board Position: Neutral

Status: Passed out of Senate health committee 5/19/2021. Awaiting floor vote.

SB 123 – Abortion (Sen. Roegner and Sen. O’Brien)

To enact the Human Life Protection Act to prohibit abortions based upon a condition precedent.

Areas of Interest:

- Prohibits, as the crime of criminal abortion, a person from purposely causing or inducing an abortion by using a drug or substance or an instrument or other means.
- Provides that criminal abortion is a felony of the fourth degree.
- Provides an affirmative defense to a criminal abortion charge if the physician performed or induced the abortion, or attempted to do so, under the determination that it was necessary to prevent the woman’s death or a serious risk of the substantial and irreversible impairment of a major bodily function.
- Requires the State Medical Board to revoke a physician’s license to practice if the physician is guilty of abortion manslaughter, criminal abortion, or promoting abortion.

Board Position: Neutral


SB 150 – Physician Contracts (Sen. Johnson and Sen. Williams)

To prohibit the use of noncompete provisions in physician employment contracts.

Areas of Interest:

- Would prohibit the use of noncompete provisions in physician employment contracts.

Board Position: Neutral

SB 151 – Infant Medical Treatment (Sen. Johnson)

To establish standards for the medical treatment of certain infants and to name the act Emery and Elliot’s Law.

Areas of Interest:

- Outlines medical treatment for mothers and infants in emergency situations or infants with a disability.

Board Position: Neutral


SB 157 – Attempted Abortions (Sen. Johnson and Senator Steve Huffman)

Regards child born alive after attempted abortion.

Areas of Interest:

- Requires reports to be made after a child is born alive following an abortion or attempted abortion.
- Establishes certain civil or criminal penalties for failing to preserve the health or life of such a child.

Board Position: Neutral


SB 161 – Surgical Smoke (Sen. Brenner)

Regards surgical smoke.

Areas of Interest:

- Requires that not later than one year after the effective date of enactment, each ambulatory surgical facility shall adopt and implement a policy designed to prevent human exposure to surgical smoke during any planned surgical procedure that is likely to generate surgical smoke.
- The policy shall include the use of a surgical smoke evacuation system.

Board Position: Neutral

HB 6 – Modify laws governing certain professions due to COVID-19 (Rep. Roemer)

To modify the laws governing certain health professionals and educator preparation programs due to COVID-19.

Areas of Interest:

- Allows pharmacists to administer immunization for influenza, COVID-19 and any other disease but only pursuant to prescription for persons seven or older.
- Allows pharmacists to administer immunizations for an disease for those 13 and older.
- Allows podiatrists to administer vaccinations for individuals seven and older for influenza and COVID-19.

Board Position: Neutral


Regards emergency prescription refills.

Areas of Interest:

- Increases from one to three the number of times that a pharmacist may dispense without a prescription certain drugs to a specific patient within a 12-month period.

Board Position: Neutral

Status: Passed out the House 5/5/2021. First Senate Health hearing 6/16/2021


To exempt certain mental health care providers’ residential and familial information from disclosure under the Public Records Law.

Areas of Interest:

- Adds forensic mental health providers, mental health evaluation providers, and regional psychiatric hospital employees to the list of professions, consolidated in continuing law into the term “designated public service worker,” whose residential and familial information is exempted from disclosure under the Public Records Law.

Board Position: Neutral


To authorize public bodies to meet via teleconference and video conference.

Areas of Interest:
- Allows public bodies to meet and hold hearings via teleconference or video conference.
- Requires public bodies to provide the public with access to meetings and hearings commensurate with the method in which the meeting is being conducted.

Board Position: Neutral


To authorize the use of medical marijuana for autism spectrum disorder.

Areas of Interest:
- Allows autism spectrum disorder to be included in qualifying conditions.

Board Position: Opposed


HB 64 – Regards fraudulent assisted reproduction (Rep. Powell)

To create the crime of fraudulent assisted reproduction and civil actions for an assisted reproduction procedure without consent.

Areas of Interest:
- Prohibits a health care professional from purposely or knowingly using human reproductive material from a donor while performing an assisted reproduction procedure if the person receiving the procedure has not expressly consented to the use of that donor’s material.
- Creates the crime of fraudulent assisted reproduction, making it a third-degree felony and allows for civil action against a fertility doctor within ten years of the offense.

Board Position: Neutral

HB 138 – Emergency Medical Services (Rep. Baldridge)

Regarding the scope of emergency medical services provided by emergency medical service personnel.

Areas of Interest:

- Eliminates the enumeration of specific services that may be provided by emergency medical services (EMS) personnel.
- Requires the State Board of Emergency Medical, Fire, and Transportation Services to establish the scope of practice for EMS personnel through rulemaking.
- Permits EMS personnel to comply with a do-not-resuscitate order issued by a physician assistant or advanced practice registered nurse.
- Requires the medical director or cooperating physician advisory board of each EMS organization to establish protocols for EMS personnel to follow when providing services at all times.

Board Position: Neutral


HB 160 – Health Estimates (Health care price transparency) (Rep. Holmes)

Regarding the provision of health care cost estimates.

Areas of Interest:

- Authorizes the relevant regulatory boards to impose administrative remedies on a health plan issuer or health care provider who fails to comply with the bill’s health care price transparency provisions.

Board Position: Interested Party


To revise the law governing the practice of athletic training.

Areas of Interest:

- Makes changes to the law governing the practice of athletic training, including by requiring an athletic trainer to practice under a collaboration agreement with a physician or podiatrist.

Board Position: Interested Party


*Regarding electronic prescriptions and schedule II controlled substances.*

**Areas of Interest:**
- Requires that all schedule II drugs be prescribed electronically.

**Board Position:** Interested Party


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*To Regulate the practice of surgical assistants.*

**Areas of Interest:**
- Creates a new license type for surgical assistants to be overseen by the Medical Board.

**Board Position:** Interested Party


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HB 203 – Occupational Licenses (Rep. Powell)

*To require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances.*

**Areas of Interest:**
- Requires automatic licensure of out of state applicants that meet certain criteria.

**Board Position:** Interested Party


To modify the laws governing the practice of advanced practice registered nurses and to designate these provisions as the Better Access, Better Care Act.

Areas of Interest:
- Would allow an APRN who has completed 2,000 clinical practice hours under a standard care arrangement the option to practice without a collaboration agreement.
- Allows an APRN who has not completed the required hours to enter into a standard care arrangement with an APRN who has completed 2,000 clinical practice hours.

Board Position: Interested Party


To revise the law governing the practice of anesthesiologist assistants.

Areas of Interest:
- Adds anesthesiologist assistants to the list of individuals authorized to prescribe drugs or dangerous drugs or drug therapy related devices during professional practice.
- Adds anesthesiologist assistant list of practitioners from which a respiratory care therapist may receive orders or prescriptions.

Board Position: Interested Party


To authorize a pregnant minor to consent to receive health care to maintain or improve her life or the life of the unborn child she is carrying.

Areas of Interest:
- Allows a pregnant minor to consent to receive health care, such as prenatal health care, health care during delivery, post-delivery health care, and family planning services, to maintain or improve her life or the life of the unborn child she is carrying.
- States that the bill does not remove or limit any person’s responsibility under Ohio law to report child abuse or neglect.

Board Position: Neutral


*Regards drug offenses and treatment.*

**Areas of Interest:**

- Proposes to reduce the abuse of prescription opioids, establish addiction treatment facilities, increase penalties for drug trafficking violations, modify penalties for drug possession, require an offender convicted of a drug possession or drug trafficking offense involving certain drugs to be subject to ten years of post-release control, allow a criminal defendant who has a severe substance use disorder involving certain drugs to be confined by a state detoxification provider while awaiting trial, create restitution work programs, and make an appropriation.

**Board Position:** Interested Party

**Status:** Introduced in the House 6/21/2021.


*To license and regulate art therapists and music therapists.*

**Areas of Interest:**

- Creates a new license type for music therapists to be regulated under the Medical Board

**Board Position:** Interested Party

**Status:** Introduced in the House 6/24/2021.
<table>
<thead>
<tr>
<th>Bill Number/Link</th>
<th>Name</th>
<th>Current Bill Status</th>
<th>Committee Assignment</th>
<th>Board Position</th>
<th>Bill Sponsor(s)</th>
<th>Date Introduced</th>
<th>Areas of Interest</th>
<th>Action Taken</th>
<th>Action Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 4</td>
<td>Public Records</td>
<td>Senate concurrence in House amendments 5/26/2021</td>
<td>House Civil Justice 2/24/2021</td>
<td>Neutral</td>
<td>Senator Kristina Roegner (R-27 Hudson)</td>
<td>1/19/2021</td>
<td>Includes emergency service telecommunicators and certain Ohio National Guard members as individuals whose residential and familial information is exempt from disclosure under the Public Records Law</td>
<td>Monitoring</td>
<td>None</td>
</tr>
<tr>
<td>SB 6</td>
<td>Enter into Interstate Medical Licensure Compact</td>
<td>Signed by Governor DeWine 6/29/2021 Effective 9/28/2021</td>
<td>House Families, Aging and Human Services 5/4/2021</td>
<td>Interested Party</td>
<td>Senator Kristina Roegner (R-27 Hudson) and Senator Steve Huffman (R-5 Tipp City)</td>
<td>1/19/2021</td>
<td>Would make Ohio a member of the Interstate Medical Licensure Compact</td>
<td>Chelsea and Stephanie attended an interested party meeting hosted by the bills sponsors. - Interested party testimony was offered at the second committee hearing - Requested amendments have been added to the bill to extend implementation and appropriation for staff.</td>
<td>Additional meetings with the bills sponsor and health committee chair are being scheduled. Continued communication and collaboration with the IMLC to ensure successful start up.</td>
</tr>
<tr>
<td>SB 9</td>
<td>Reduce regulatory restrictions in administrative rules</td>
<td>Passed out of the Senate 3/10/2021</td>
<td>First House hearing 5/20/2021</td>
<td>Neutral - does not currently impact SMBO</td>
<td>Senator Rob McColley (R-1 Napoleon) and Senator Kristina Roegner (R-27 Hudson)</td>
<td>1/21/2021</td>
<td>Requires certain agencies to reduce the number of regulatory restrictions in their administrative rules.</td>
<td>Monitoring for future potential inclusion</td>
<td>The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>SB 48</td>
<td>Cultural Competency</td>
<td>First Senate Hearing 6/16/2021</td>
<td>Senate Health 2/10/2021</td>
<td>Neutral</td>
<td>Senator Tina Maharath (D-3 Canal Winchester) and Nickie Antonio (D-23 Lakewood)</td>
<td>2/3/2021</td>
<td>Require certain health care professionals to complete instruction in cultural competency. Includes: dentists, nurses, pharmacists, physicians, psychologists and requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board.</td>
<td>Monitoring</td>
<td>The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>SB 55</td>
<td>Massage Therapy (companion HB 81)</td>
<td>Reported out of Senate Committee 5/19/2021</td>
<td>Senate Health 2/10/21</td>
<td>Neutral</td>
<td>Senator Andrew Brenner (R-19)</td>
<td>2/10/2021</td>
<td></td>
<td>Monitoring</td>
<td>The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>Bill</td>
<td>Title</td>
<td>Introduction Date</td>
<td>Introduced Date</td>
<td>Interested Parties</td>
<td>Introduced Date</td>
<td>Introduced By</td>
<td>Introduced Date</td>
<td>Introduced By</td>
<td>Introduced Date</td>
</tr>
</tbody>
</table>
SB 206  Art & Music Therapists  Introduced 7/1/2021  Pending  Neutral  Sen. Kenny Yuko (D-25 Richmond Heights) Sen. Andrew Brenner (R-19 Delaware)  7/1/2021  Creates a new license type for music therapists to be regulated under the Medical Board  Monitoring  The policy team will continue to monitor this bill as it progresses through the legislative process.

HB 6  Modify laws governing certain professions due to COVID-19  Enacted 5/14/2021 Certain provisions effective 10/9/2021  Senate Government Oversight and Reform 3/10/2021  Neutral  Rep Bill Roemer (R-38)  2/3/2021 - allows pharmacists to administer immunization for influenza, COVID-19 and any other disease but only pursuant to prescription for persons seven or older - allows pharmacists to administer immunizations for an disease for those 13 and older - allows podiatrists to administer vaccinations for individuals seven and older for influenza and COVID-19  Monitoring  The policy team will continue to monitor this bill as it progresses through the legislative process.

HB 37  Regards emergency prescription refills  First Senate Health Hearing 6/16/2021  Senate Health 5/12/2021  Interested Party  Rep. Gayle Manning (R-55 North Ridgeville)  2/3/2021 Increases from one to three the number of times that a pharmacist may dispense without a prescription certain drugs to a specific patient within a 12-month period.  Monitoring  The policy team will continue to monitor this bill as it progresses through the legislative process.

HB 41  Exempt mental health care providers’ info from Public Records Law  First Senate Health Hearing 3/24/2021  Senate Health 3/17/2021  Interested Party  Rep. Laura Lanese (R-23) Rep. Beth Liston (D-21)  2/3/2021 Adds forensic mental health providers, mental health evaluation providers, and regional psychiatric hospital employees to the list of professions, consolidated in continuing law into the term “designated public service worker,” whose residential and familial information is exempted from disclosure under the Public Records Law.  Monitoring  The policy team will continue to monitor this bill as it progresses through the legislative process.

HB 43  Authorize public bodies to meet via video- and teleconference  First House Hearing 2/11/2021  Government Oversight and Reform 2/4/2021  Neutral  Rep. Lisa Sobecki (R-45 Toledo) and Rep. Jim Hoops (R-81 Napoleon)  2/3/2021 Allows public bodies to meet and hold hearings via teleconference or video conference. Requires public bodies to provide the public with access to meetings and hearings commensurate with the method in which the meeting is being conducted.  Monitoring  The policy team will continue to monitor this bill as it progresses through the legislative process.
<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Title</th>
<th>Hearing Details</th>
<th>Committee Details</th>
<th>Sponsor Details</th>
<th>Action Dates</th>
<th>Status and Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 60</td>
<td>Authorize medical marijuana for autism spectrum disorder</td>
<td>Fourth House committee hearing 6/15/2021</td>
<td>House Health 2/4/2021</td>
<td>Opposed - the Board has already weighed in on the issue - petition review process is progress</td>
<td>Rep Juanita Brent (D-12) and Rep Bill Seitz (R-30) 2/3/2021</td>
<td>Adds autism spectrum disorder to qualifying conditions Monitoring The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 64</td>
<td>Regards fraudulent assisted reproduction</td>
<td>Second House hearing 3/17/2021</td>
<td>House Criminal Justice 2/4/2021</td>
<td>Neutral</td>
<td>Rep. Jena Powell (R-80) 2/3/2021</td>
<td>Prohibits a health care professional from purposely or knowingly using human reproductive material from a donor while performing an assisted reproduction procedure if the person receiving the procedure has not expressly consented to the use of that donor’s material Monitoring The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 81</td>
<td>Revise laws governing massage establishments / massage therapy (Companion SB 55)</td>
<td>Passed out of the House 6/24/2021</td>
<td>House Commerce and Labor 2/10/2021</td>
<td>Neutral</td>
<td>Rep. Phil Plummer (R-40) and Rep. Susan Manchester (R-84) 2/9/2021</td>
<td>Requires any individual practicing massage within the state to obtain the current massage therapy license issued by the State Medical Board Monitoring The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 110</td>
<td>State Budget</td>
<td>Signed by Governor DeWine 6/30/2021</td>
<td>Senate Finance 4/28/2021</td>
<td>Support</td>
<td>Rep. Scott Oelslager (R-48) 2/16/2021</td>
<td>State operating budget - Medical Board request was granted in the first version - Hospital licensure (R.C. 3722.02 (primary), 3722.01 to 3722.14, and 3722.99; conforming changes in numerous other R.C. sections) Stephanie provided testimony before the House Finance Health and Human Services Subcommittee on 2/18/2021 Monitoring The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 122</td>
<td>Telehealth</td>
<td>Passed out of the House 4/15/2021</td>
<td>Senate Health 4/21/2021</td>
<td>Interested Party</td>
<td>Rep. Mark Fraizer (R-71) and Rep Adam Holmes (R-97) 2/16/2021</td>
<td>Permits specified health care professionals to provide telehealth services. Requires telehealth services provided by health care professionals to be done so according to specified conditions and standards. Permits certain health care licensing boards to adopt rules as necessary to carry out the bill’s provisions regarding telehealth services provided by health care professionals. Monitoring The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>Bill</td>
<td>Description</td>
<td>Status</td>
<td>Committee</td>
<td>Sponsor</td>
<td>Action Date</td>
<td>Summary</td>
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<tr>
<td>HB 138</td>
<td>Regards the scope of emergency medical services</td>
<td>Passed out of the House 6/16/2021</td>
<td>Senate Health 6/23/2021</td>
<td>Neutral</td>
<td>Rep. Brian Baldridge (R-90 Winchester)</td>
<td>2/18/2021</td>
</tr>
<tr>
<td>HB 160</td>
<td>Regards the provision of health care cost estimates (health care price transparency)</td>
<td>First House hearing 3/10/2021</td>
<td>House Insurance 3/2/2021</td>
<td>Interested Party</td>
<td>Rep. Adam Holmes (R-97 Nashport)</td>
<td>3/3/2021</td>
</tr>
<tr>
<td>HB 176</td>
<td>Revise the Athletic Training Law</td>
<td>Passed out of the House 5/5/2021</td>
<td>Senate Health 5/12/2021</td>
<td>Interested Party</td>
<td>Rep. Rick Carfagna (R-68 Genoa Township) and Rep. Thomas Hall (R-53 Madison Township)</td>
<td>3/4/2021</td>
</tr>
<tr>
<td>HB 193</td>
<td>Regards electronic prescriptions</td>
<td>Passed out of the House 6/23/2021</td>
<td>Senate Health 6/28/2021</td>
<td>Interested Party</td>
<td>Rep. Al Cutrona (R-59 Canfield) and Rep. Gail Pavliga (R-75 Atwater)</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>HB 196</td>
<td>Regulate the practice of surgical assistants</td>
<td>Second House hearing 5/11/2021</td>
<td>House Health 3/10/2021</td>
<td>Neutral</td>
<td>Rep. Brigid Kelly (D-31 Cincinnati) and Rep. Sara Carruthers (R-51 Hamilton)</td>
<td>3/9/2021</td>
</tr>
<tr>
<td>Bill</td>
<td>Description</td>
<td>Date Introduced</td>
<td>Committee</td>
<td>Interested Parties</td>
<td>Date</td>
<td>Status</td>
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<tr>
<td>HB 203</td>
<td>Require occupational license if experienced in another state</td>
<td>6/10/2021</td>
<td>State and Local Government</td>
<td>Interested Party: Rep. Jena Powell (R-80)</td>
<td>3/10/2021</td>
<td>Requires automatic licensure of out of state applicants that meet certain criteria. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 221</td>
<td>To modify the laws governing the practice of advanced practice registered nurses and to designate these provisions as the Better Access, Better Care Act.</td>
<td>Introduced 3/17/2021</td>
<td>House Health</td>
<td>Interested Party: Rep. Tom Brinkman (R-27 Mt. Lookout) and Rep. Jennifer Gross (R-52 West Chester)</td>
<td>3/17/2021</td>
<td>Would allow an APRN who has completed 2,000 clinical practice hours under a standard care arrangement the option to practice without a collaboration agreement. Allows an APRN who has not completed the required hours to enter into a standard care arrangement with an APRN who has completed 2,000 clinical practice hours. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 318</td>
<td>Anesthesiologist Assistants</td>
<td>Introduced 5/19/2021</td>
<td>House Health</td>
<td>Interested Party: Rep. DJ Swearingen (R-89 Huron) and Rep. Phil Plummer (R-40 Dayton)</td>
<td>5/19/2021</td>
<td>Revises the law governing the practice of anesthesiologist assistants. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 355</td>
<td>Authorize a pregnant minor to consent to receive health care</td>
<td>Introduced 5/19/2021</td>
<td>House Health</td>
<td>Interested Party: Rep. Kristen Boggs (D-18 Columbus) and Rep. Paula Hicks-Hudson (D-44 Toledo)</td>
<td>5/19/2021</td>
<td>Allows a pregnant minor to consent to receive health care, such as prenatal health care, health care during delivery, post-delivery health care, and family planning services, to maintain or improve her life or the life of the unborn child she is carrying. States that the bill does not remove or limit any person’s responsibility under Ohio law to report child abuse or neglect. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 356</td>
<td>Regards drug offenses and treatment</td>
<td>Introduced 6/21/2021</td>
<td>House Criminal Justice</td>
<td>Interested Party: Rep. Mike Loychik (R-63 Bazetta) and Rep. Adam C. Bird (R-66 New Richmond)</td>
<td>6/21/2021</td>
<td>Proposes to reduce the abuse of prescription opioids, establish addiction treatment facilities, increase penalties for drug trafficking violations, modify penalties for drug possession, require an offender convicted of a drug possession or drug trafficking offense involving certain drugs to be subject to ten years of post-release control, allow a criminal defendant who has a severe substance use disorder involving certain drugs to be confined by a state detoxification provider while awaiting trial, create restitution work programs, and make an appropriation. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>HB 359</td>
<td>Art &amp; Music Therapists</td>
<td>Introduced 6/24/2021</td>
<td>House Primary and Secondary Education</td>
<td>Interested Party: Rep. Allison Russo (D-24 Upper Arlington) and Rep. Jamie Callender (R-61 Concord)</td>
<td>6/24/2021</td>
<td>Creates a new license type for music therapists to be regulated under the Medical Board. Monitoring: The policy team will continue to monitor this bill as it progresses through the legislative process.</td>
</tr>
<tr>
<td>Bill Numbers</td>
<td>Bill Title</td>
<td>Referred To/Committee</td>
<td>Committee</td>
<td>Sponsor(s)</td>
<td>Date</td>
<td>Summary</td>
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<tr>
<td>S. 168 / H.R. 708</td>
<td>Temporary Reciprocity to Ensure Equal Access to Treatment &quot;TREAT&quot; Act</td>
<td>Referred to Senate Committee 2/2/2021</td>
<td>Committee on Health, Education, Labor and Pensions</td>
<td>Senate Bill - Sen. Christopher Murphy (D-CT) and Sen. Roy Blunt (R-MO) House Resolution - Rep Bob Latta (R-OH) and Rep. Debbie Dingell (D-MI)</td>
<td>2/2/2021</td>
<td>Would allow health care professionals to practice across state lines in-person or via telehealth services during COVID-19 or a future public health emergency.</td>
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<td>S. 155/ H.R. 688</td>
<td>Equal Access to Care Act</td>
<td>Referred to Senate Committee 2/2/2021</td>
<td>Committee on Health, Education, Labor and Pensions</td>
<td>Sen. Ted Cruz (R-TX)</td>
<td>2/2/2021</td>
<td>Would allow health care providers licensed in one jurisdiction to provide telemedicine to patients in another in which they are unlicensed during the COVID-19 public health emergency and for 180 days after the pandemic has ended.</td>
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<td>H.R. 341</td>
<td>Ensuring Telehealth Expansion Act</td>
<td>Referred to House Committee 1/15/2021</td>
<td>Committee on Energy and Commerce</td>
<td>Rep. Roger Williams (R-TX)</td>
<td>1/15/2021</td>
<td>Would extend telehealth provisions from the CARES Act through 2025, including eliminating originating site restrictions, implementing payment parity</td>
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<td>H.R. 366</td>
<td>Protecting Access to Post-COVID–19 Telehealth Act of 2021</td>
<td>Referred to House Committee 1/19/2021</td>
<td>Committee on Energy and Commerce</td>
<td>Rep. Mike Thompson (D-CA) and Rep. David Schweikert (R-AZ)</td>
<td>1/19/2021</td>
<td>Would eliminate most geographic and originating site restrictions in Medicare, establish the patient’s home as an eligible telehealth site, continue CMS telehealth reimbursement for 90 days beyond the end of the public health emergency (PHE), make permanent disaster waiver authority, and require a study on the use of telehealth during COVID, including telehealth utilization rates across state lines.</td>
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<tr>
<td>H.R. 596 / S. 57</td>
<td>ACCESS Act</td>
<td>Referred to House Committee 1/28/2021</td>
<td>House Appropriations; Energy and Commerce</td>
<td>House Resolution - Rep. Janice Schakowsky (D-IL) and Rep. Gus Bilirakis (R-FL) Senate Bill - Sen. Amy Klobuchar (D-MN) and Sen. Bob Casey (D-PA)</td>
<td>1/28/2021</td>
<td>Would authorize $50 million for the HHS' Telehealth Resource Center to assist nursing facilities to expand the use of telehealth and establish a grant program to support virtual visits in nursing homes during the pandemic.</td>
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**Key**

- Neutral indicates no committee jurisdiction noted.
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<tr>
<th>Monitoring</th>
<th>Requires immediate action</th>
<th>Enacted</th>
<th>No Longer Active</th>
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