State Medical Board
Handling of Mental & Physical Illness
Michael Schottenstein, M.D. – Board Member
July 21, 2021
Statutes
Laws enacted by Ohio legislature
Ohio Revised Code (ORC)

Rules
Regulations developed and enacted by Medical Board
Ohio Administrative Code (OAC)
Rules clarify & amplify provisions in the Ohio Revised Code
The Board

The Medical Board is the state agency charged with regulating the practice of medicine and selected other health professions.

12 members appointed by the governor to 5-year terms:
- 9 doctors: 7 MDs, 1 DO, and 1 DPM
- 3 consumer members

The board meets the second Wednesday of each month and has returned to the Rhodes State Office Tower. Meetings are also available via livestream.
## License Types

The Medical Board regulates more than 90,000 licensees.

<table>
<thead>
<tr>
<th>Type</th>
<th>Licensees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allopathic Physicians</td>
<td>43,673</td>
</tr>
<tr>
<td>Osteopathic Physicians</td>
<td>7,425</td>
</tr>
<tr>
<td>Podiatric Physicians</td>
<td>978</td>
</tr>
<tr>
<td>Training Certificates</td>
<td>8,049</td>
</tr>
<tr>
<td>Anesthesiologist Assistants</td>
<td>328</td>
</tr>
<tr>
<td>Physician Assistants</td>
<td>4,907</td>
</tr>
<tr>
<td>Radiologist Assistants</td>
<td>16</td>
</tr>
<tr>
<td>Genetic Counselors</td>
<td>527</td>
</tr>
<tr>
<td>Massage Therapists</td>
<td>11,245</td>
</tr>
<tr>
<td>Dietitians</td>
<td>4,518</td>
</tr>
<tr>
<td>Acupuncturists</td>
<td>322</td>
</tr>
<tr>
<td>Respiratory Care</td>
<td>8,536</td>
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</tbody>
</table>

*June 30, 2021*
Licensure
Confidential investigations
Disciplinary actions
Probationary monitoring
Education & Outreach

Medical Board Core Services
Licensure

All professionals regulated by the Medical Board must have a license issued by the Board before they can practice in Ohio.

Licensure staff reviews the applications to be sure that the applicant qualifies for a license. The Deputy Director of Licensure has authority to approve applications.
What is a complaint?

Any allegation of licensee misconduct received by the Medical Board

Complaints are confidential
Medical Board Investigations

- Ohio law makes complaints received by the Medical Board and board investigations confidential

- The board may only share investigative information with law enforcement agencies, other licensing boards, or other governmental agencies that are prosecuting, adjudicating or investigating alleged violations of statutes or rules

- Board disciplinary actions are public record – posted on med.ohio.gov and licensee profile on elicense.ohio.gov
Complaint, Investigation, Enforcement and Disciplinary Process

Complaint Received

- Not within board’s jurisdiction
- Complaint does not support disciplinary action
- Investigation supports disciplinary action by board; enforcement staff develops case for disciplinary action

Complaint Closed

- Consent agreement ratified by board
- Board approves issuance of a citation
- No hearing requested by licensee

Public Information

- Hearing Examiner prepares proposed findings and order (PFPO) for board review
- Legal department prepares findings, order, journal entry (FOJE) for board review
- Hearing requested by licensee; hearing held
- Hearing Examiner prepares report & recommendation (R&R) for board review

Information is Confidential

Disciplinary Action

- Board votes to accept or amend PFPO
- Board votes to accept or amend FOJE
- Board votes to accept or amend R&R
Nurse Practitioners/Physician Assistants

Ohio Revised Code 4731.22 identifies 51 grounds for disciplinary actions including:

• Permitting one's name or one's license or certificate to practice to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

• Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter

• Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;
If the Medical Board is investigating a PA for violation of rule or law, it will interview the supervising physician and review his or her practices.

The Medical Board can also work with the Board of Nursing or Board of Pharmacy during an investigation of an NP.
Ohio Revised Code

Duties of supervising physicians

ORC 4730.21

Duties of collaborating physicians

ORC 4723.431
Types of Consent Agreements

- Probationary
- Reprimand
- Definite Suspension
- Indefinite Suspension
- Temporary Limitation
- Permanent Limitation
- Permanent Withdrawal
- Permanent Surrender
Other Types of Formal Disciplinary Action

- Notice of opportunity for hearing
- Summary suspension
- Automatic suspension
Confidential Monitoring Program

These slides pertain to the Medical Board’s enforcement of Section 4731.22(B)(19), Ohio Revised Code, related to mental or physical illnesses excluding chemical abuse or dependency

*Substance use disorder has a different set of statutes/rules
Diagnosis ≠ Disciplinary Action

If your diagnosis has no impact on your ability to practice according to prevailing and acceptable standards of care:

- No legal basis for the Board to take any disciplinary action
- All investigations are confidential

If your diagnosis has an impact on your ability to practice according to standards without tx/monitoring/supervision:

- New confidential monitoring program became effective August 31, 2018
- Formal action where warranted
Current Application Question

In the past five years, have you been diagnosed as having, or been hospitalized for a medical condition which in any way impairs or limits your ability to practice with reasonable skill and safety?
Legislative Update

The board has discussed this application question and is planning to pursue legislative change to exempt responses from the Public Records Law.
<table>
<thead>
<tr>
<th>Diagnosis Alone</th>
<th>Other Violations</th>
<th>Mental/Physical</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
<td>Maybe</td>
</tr>
<tr>
<td>A diagnosis alone is not a basis for any board disciplinary action</td>
<td>Criminal acts or convictions associated with a mental illness can trigger an independent basis for disciplinary action</td>
<td>Authority limited to situations impacting ability to practice according to acceptable and prevailing standards of care</td>
</tr>
</tbody>
</table>
What to Expect

- All investigations confidential under 4731.22(F)(5), ORC

- State Medical Board of Ohio v. Miller, Supreme Court of Ohio (July 26, 1989) allows Board to subpoena medical records

- Some information necessarily disclosed if subsequent formal disciplinary action results
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1.</strong></td>
<td>Clinical diagnosis</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>Does the diagnosis potentially impact ability to practice?</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Is treatment, monitoring, or supervision required to practice safely?</td>
</tr>
</tbody>
</table>
Qualifications for Confidential Monitoring Program

- Cooperation/releases
- Undertake treatment
- Adhere to treatment plan
- Any prior discipline in Ohio or elsewhere was limited to (B)(19) only
- Not on probation now
- No sexual boundary issues
- No criminal conduct or convictions
- No other actionable violations
- No past or current threats of violence or acts of violence against property or individuals
- No information indicating that allowing non-public monitoring creates risk of potential patient harm

Ohio Administrative Code 4731-28
Diagnosis ≠ Disciplinary Action

- Diagnosis alone does not mandate disciplinary action
- However, you must answer truthfully. Failing to answer the application questions truthfully = licensure fraud

Don’t Create a Problem
- Most (B)(19) issues are reviewed and determined not to be actionable
- Many individuals will qualify for the new confidential monitoring program
- When formal public action is unavoidable, the board will work with you to reach a settlement where possible.

Don’t Be Afraid
Program Statistics

Currently, there are 14 participants in the program. Because it is confidential, the identities of the participants are protected.
Program Statistics

- 12 MDs, 1 DO, 1 PA
- 11 mental health issues (e.g., anxiety and depression)
  * Most of the participants with a mental health diagnosis have multiple diagnoses.
- 3 physical health issues
- 100% participants actively engaged in treatment
Duty to Report

Licensees have a personal duty to report to the State Medical Board of Ohio when they believe an individual licensed by the Board has violated the Board’s laws or rules including sexual misconduct, impairment, practice below the minimal standards of care, and improper prescribing of controlled substances.

Reports of misconduct to supervisors, law enforcement or health care system management do **NOT** fulfill the duty to report to the Board; failure to report could result in formal disciplinary action.
Case: Duty to Report

Doctor knew for almost 3 years that his partner and co-owner of their pain management practice was accused of engaging in sexual misconduct with female patients during medical exams.

He failed to report his partner’s inappropriate sexual conduct to the Medical Board.

Board action: Permanent revocation
State Medical Board of Ohio's Confidential Complaint Hotline

1-833-333-SMBO (7626)
Ohio Physicians Health Program (OPHP)

OPHP offers confidential resources for mental health, emotional and behavioral illness, wellness coaching services and more.

To view available provider wellness resources, visit ophp.org.

Additional Resource

Crisis Text Line:
- Text 4HOPE to 741 741