



**POLICY COMMITTEE MEETING**  
**December 11, 2019**  
**30 East Broad Street, Columbus, OH 43215, Room 336**

<p><b>Members:</b> Amol Soin, MD Mark Bechtel, MD Betty Montgomery Sherry Johnson, DO Robert Giacalone</p> <p><b>Other Board Members present:</b> Bruce Saferin, DPM Kim Rothermel, MD Richard Edgin, MD Michael Schottenstein, MD Jonathon Feibel, MD Harish Kakarala, MD</p>	<p><b>Staff:</b> Stephanie Loucka, Executive Director Jill Reardon, Deputy Director Strategic Services Kim Anderson, Chief Legal Counsel Joan Wehrle, Education &amp; Outreach Program Manager Rebecca Marshall, Chief Enforcement Attorney Jonithon LaCross, Director of Public Policy and Government Affairs</p>
--	--

Dr. Soin called the meeting to order at 9:03 a.m.

#### **Meeting Minutes Review**

Dr. Soin reported that the draft minutes of the November 13, 2019 meeting had been distributed to the committee and were included in the agenda materials.

**Dr. Bechtel moved to approve the draft minutes of the November 13, 2019 Policy Committee meeting. Ms. Montgomery seconded the motion. Motion carried.**

#### **Rules Review Update**

Ms. Anderson referred to the report included in the agenda materials. She reported that several rule packages are under review at CSI. We received comments back from CSI regarding the PA rules and the consult rules. Ms. Anderson reported that those rules will be filed with JCARR in January.

Ms. Montgomery asked if the board is timely with the rules. Ms. Anderson reported that we are close. There are a few Respiratory Care rules beyond the five year timeline, but those have been filed with CSI. The light based medical device rules are our oldest pending rules and they remain at CSI because of antitrust review. Ms. Anderson reported that she gets periodic updates from the director of CSI about the status of those rules. Ms. Anderson said it is a difficult project and CSI knows that these rules are out of the five year review schedule.

## Legislative Update

### **SB7 Temp State Occupational Licenses-Military**

Regarding temporary state occupational licenses for members of the military and their spouses.

Mr. LaCross reported that conference committee met yesterday regarding this bill which addresses temporary state occupational licenses for members of the military and their spouses.

He reported that the bill had initially been almost a full license reciprocity bill. He worked with legislators to get compromise language that would require applicants to have to meet our licensure standards, however that was not successful.

Mr. LaCross said he reviewed the Arizona bill which was the basis for SB7. The Arizona bill had much stricter standards in it than what was contained in the Ohio bill. In Arizona, any applicant found to have unprofessional conduct or any actions, the regulatory board had the right to hold the application over. Mr. LaCross said he was able to get some of that language included in SB7. He does not have a hard copy of the bill language yet. Essentially, if the board finds any adverse information about the applicant through the licensure process, the board can delay the review of the application. Mr. LaCross said that the amendments to the bill would impact all regulatory agencies in the state.

Mr. LaCross said that he will share the bill as amended when it is available. The Senate bill went out of conference committee with amendments. HB133 is a companion version of the bill.

Dr. Schottenstein said that full reciprocity of a license held in another state had been our primary concern with the legislation. Mr. LaCross commented that the amendments include background checks and compliance with Ohio scope of practice.

Ms. Loucka stated that we will review the amended version of the bill, and if any language causes patient safety concerns, we can pursue amendments through other legislation if needed.

### **HB224 Nurse Anesthetists (CRNA bill)**

Mr. LaCross reported that a substitute bill was introduced yesterday. The substitute bill contains amendments offered by professional associations. He'll send the updated bill to board members and agency leadership. He said the amendments state that the CRNA can only prescribe patient specific medication as indicated by the supervising physician.

Dr. Schottenstein asked about CRNAs using the term nurse anesthesiologist. Mr. LaCross said that issue was not addressed. He said this is an issue that may be discussed further by the board through policy committee.

Ms. Anderson said that we need to see and review the language of the substitute bill to see if it authorizes this title change in the bill. Mr. LaCross said the substitute bill does not include that authorization.

Mr. LaCross reported that other states have adopted position papers about CRNA use of the term anesthesiologist. Some CRNA professional associations have started using that term.

Ms. Montgomery asked if the board has authority to make statement that term anesthesiologist should only be for physicians. Dr. Sojin commented that the board may have the ability to make the statement as long as it did not conflict with any laws/rules, however it may not be able to be enforced.

Ms. Anderson reported that the board has adopted position statements in the past. She also said that we should review the language of the substitute bill as well as what other states have done to address use of the term nurse anesthesiologist. Ohio law has a statute that defines the term physician, but it is not specialty specific.

Ms. Montgomery commented that using the term nurse anesthesiologist is really a misrepresentation, as the nurses are not doctors.

Mr. LaCross said that he has begun compiling information about how other states address this issue and he will report that information to the policy committee in January.

Dr. Schottenstein asked for a copy of the LSC analysis of the substitute bill as well.

### **House State and Local Government Committee Recommendations**

Mr. LaCross reported that the House State and Local Government Committee put together a recommendation list addressing state licensure and state operations.

He said the recommendations want to change the CME volunteer hour issued discussed by the board in November. Another recommendation would move specific licensees from state licensure to national certification in order to practice. Specifically, cosmetic therapists, genetic counselors, acupuncturists and oriental medicine practitioners and radiologist assistants. He will provide information to the board about the recommendations for discussion in January. He asked for feedback from the board.

Dr. Saferin asked how any discipline could be imposed if a practitioner does not have a license. How does a national certification list protect the public? It was noted that the current legislative trend is for less licensure.

Ms. Loucka noted that we will keep reviewing licensure as a jobs related issue. She will be asking Mr. LaCross to get more information about licensure of allied practitioners throughout the country.

Dr. Schottenstein commented that the PA model of requiring national certification to be eligible for licensure could be a model for other professions.

### **Non-disciplinary Approach for Medical Illness**

Dr. Feibel encouraged the board to consider a non-disciplinary approach for licensees with a medical illness that impacts their ability to practice.

Dr. Saferin said that the board's confidential monitoring program created last year was designed to address those concerns. Ms. Marshall provided information regarding the board's confidential monitoring program and the criteria used to determine if a licensee is eligible for the program.

Staff works closely with the Secretary and Supervising Member and she assured the committee that we've put all who meet the criteria into the program.

Through discussion, Ms. Marshall clarified that the laws in effect at time the licensee's conduct occurred are what are used in each case.

### **HB388 Out-Of-Network Healthcare**

Dr. Soin asked if this bill was being tracked. Mr. LaCross said that it is being tracked and that the professional associations are currently discussing this bill.

### **HB 263 Revise Occupational License Restrictions for Former Criminals “The Fresh Start Act”**

Dr. Soin asked if this bill has any impact on the board. Mr. LaCross said that the legislature reviewed regulatory boards who denied licensure to a candidate because the applicant had a criminal record. He said that the example often cited is that a person with a criminal record is not eligible to obtain a license to spread pesticides.

Mr. LaCross said the pharmacy board, nursing board, and medical board are working on potential amendments to the bill. He will share the proposed amendments with the board when the draft is finalized.

Currently, the bill requires a list of federal and state criminal violations that would disqualify someone from obtaining a licensure. It includes a few automatic disqualifiers such as a conviction for rape or murder. He said if the person has had a felony conviction more than five years ago, they may qualify for a license. Ms. Montgomery said the time clock starts at the time of the felony conviction not when the person completes probation or community control. She asked that the timing issue be reviewed.

Dr. Rothermel expressed concern about moral turpitude references not being included in the bill. She asked if the Medical Board could develop a strong statement that voices significant concerns about that omission, especially for physician licensees caring for patients.

Dr. Soin expressed appreciation for the robust discussion held this morning and the efforts of the board members to review and comment on pending legislation.

Dr. Soin summarized that follow-up reports regarding SB7, HB263, HB224 CRNA bill, and HB388 will be provided to the committee.

### **Statement Regarding Practice Closures**

Ms. Anderson reported that the board has been approached by our partners at the Department of Health and the Department of Mental Health and Addiction Services about concerns with sudden closure of physician offices due to criminal charges or other sudden, unanticipated events. These closures leave large numbers of patients who are being prescribed controlled substances or medication assisted treatment without physicians to oversee their care. Physicians have concerns in taking over the prescribing for patients in these situations due to the prior prescriptions and the possible need to wean the patients from high doses.

She said that the Medical Board has developed detailed rules regarding prescribing of controlled substances and medication assisted treatment with a focus on patient safety. The board is aware of the challenges facing prescribers who are undertaking care of patients in the sudden office closure situations. In those situations, the board understands that the physician may have some patients for which the prescribing is not typical of their regular practice. The board expects the physician to appropriately document the rationale for medication choice and dosage and to make reasonable attempts to comply with all applicable laws and to adjust medications once the patient is stabilized.

She said the statement included in the agenda materials is an attempt to address these concerns. Ms. Anderson said the statement would be included in the prescriber resources on the board's website.

Dr. Bechtel said that doctors are afraid to prescribe pain medications to their own patients. He said it is very challenging for doctors when asked to care for new patients who had been given drugs from other doctors.

Dr. Feibel said the statement needs to be clear that the doctors will not face disciplinary action for caring for these patients and trying to adjust the patient's medication dosages.

Mr. Giacalone said that the prescribing has to be within the minimal standards of care.

Dr. Soin noted that it would be good to have statement that says as long as the licensee complies with the rules, they won't face disciplinary action by the board, but it should be a carefully crafted statement. Dr. Schottenstein said that documentation in the patient record is key. Dr. Feibel agreed that it has to be a clear statement, otherwise doctors won't take the risk of caring for those patients.

Board members realized that if a pain clinic closes, some patients may have higher MEDs and those patients can't be abruptly weaned from those dosages.

Dr. Soin asked if there was a way to redraft the statement to clearly state what a doctor can do so as not to face repercussions from the board. Ms. Montgomery suggested FAQs may be helpful.

Ms. Anderson said that the Medication Assisted Treatment (MAT) rules and the chronic pain rules will be reviewed to develop FAQs. She said that she will work with Dr. Soin to develop factual scenarios to replace a blanket statement.

## Adjourn

**Dr. Bechtel moved to adjourn the meeting. Motion seconded by Ms. Montgomery. Motion carried.** The meeting adjourned at 10:00 a.m.

jkw



**MEMORANDUM**

TO: Robert P. Giacalone, Acting Chair, Policy Committee  
Members, Policy Committee

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: Rule Review Update

DATE: December 31, 2019

---

Attached please find the spreadsheet outlining status of rules and schedule of rule review for 2020.

**Action Requested: No Action Requested**

---

# Legal Dept. Rules Schedule

As of 12/31/19

## RULES AT CSI

### Comment Deadline 7/31/19

4731-13-13

### Comment deadline 11/22/19

4761-5-01	4761-5-04	4761-5-06
4761-6-01	4761-7-04	4761-5-02
4761-9-01	4761-9-04	4761-10-03
4761-9-05	4761-9-07	4761-8-01
4761-9-02		

### Comment Deadline 12/2/19

4731-33-01	4731-33-02
4730-4-01	4730-4-02

### Comment Deadline 12/20/19

Military Rules for all license types

### Approved to File with CSI

4731-11-02	4731-11-03	4731-11-04
4731-11-04.1	4731-11-07	4731-11-11
4731-18 – Light Based Medical Device Rules		

## RULES AT JCARR

### Ready To File with JCARR

4731-11-01	4731-35-01
4731-11-14	4731-35-02
4730 Chapters 1, 2, and 3	

## RULES FOR REVIEW 2020

### February

4774-1-01 through -04  
Radiologist Assistants

### March

4731-8-01 through -06  
Personal Information Systems

### April

4731-13-01 through -36  
Hearing Rules

### May

4731-17-01 through -07  
Exposure-Prone Invasive Procedures and Precautions

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4730-1-01	Regulation of Physician Assistants - Definitions		06/12/19	07/16/19	11/07/19					09/30/18	09/30/23
4730-1-05	Quality Assurance System		06/12/19	07/16/19	11/07/19					08/07/18	08/07/23
4730-1-06	Licensure as a physician assistant	03/22/19	06/12/19	12/04/19						09/30/18	09/30/23
4730-1-06.1	Military provisions related to certificate to practice as a physician assistant	03/22/19	06/12/19	12/04/19						09/30/15	09/30/20
4730-1-07	Miscellaneous Provisions		06/12/19	07/16/19	11/07/19					09/30/18	09/30/23
4730-1-08	Physician assistant delegation of medical tasks and administration of drugs		06/12/19	07/16/19	11/07/19					07/31/16	07/31/21
4730-2-01	Physician Delegated Prescriptive Authority - Definitions		06/12/19	07/16/19	11/07/19					9/30/18	09/15/19
4730-2-04	Period of on-site supervision of physician-delegated prescriptive authority		06/12/19	07/16/19	11/07/19					11/30/18	11/15/23
4730-2-05	Addition of valid prescriber number after initial licensure		06/12/19	07/16/19	11/07/19					11/30/18	11/15/23
4730-2-06	Physician Assistant Formulary		06/12/19	07/16/19	11/07/19					06/30/14	12/27/19
4730-2-07	Standards for Prescribing		06/12/19	07/16/19	11/07/19					9/30/18	12/27/19
4730-2-10	Standards and Procedures for use of OARRS		06/12/19	07/16/19	11/07/19					09/30/18	09/30/23
4730-4-01	Definitions									04/30/19	04/30/24
4730-4-03	Office Based Treatment for Opioid addiction									04/30/19	04/30/24
4730-4-04	Medication assisted treatment using naltrexone									04/30/19	04/30/24
4731-1-01	Limited Practitioners - Definition of Terms									03/30/20	03/30/25
4731-1-02	Application of Rules Governing Limited Branches of Medicine or Surgery									07/31/19	07/31/24
4731-1-03	General Prohibitions										08/31/23
4731-1-04	Scope of Practice: Mechanotherapy									12/31/18	12/31/23

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-1-05	Scope of Practice: Massage Therapy				04/24/19	Refiled 8/20/19 4/29/19	06/05/19		10/16/19	11/05/19	11/05/24
4731-1-06	Scope of Practice: Naprapathy									08/31/18	08/31/23
4731-1-07	Eligibility of Electrologists Licensed by the Ohio State Board of Cosmetology to Obtain Licensure as Cosmetic Therapists Pursuant to Chapter 4731 ORC and Subsequent Limitations									12/31/18	12/31/23
4731-1-08	Continuing Cosmetic Therapy Education Requirements for Registration or Reinstatement of a License to Practice Cosmetic Therapy									09/30/19	09/30/24
4731-1-09	Cosmetic Therapy Curriculum Requirements										08/31/23
4731-1-10	Distance Education									01/31/19	01/31/24
4731-1-11	Application and Certification for certificate to practice cosmetic therapy									03/30/20	03/30/25
4731-1-12	Examination									11/30/16	11/30/21
4731-1-15	Determination of Standing of School, College or Institution									12/31/18	12/31/23
4731-1-16	Massage Therapy curriculum rule (Five year review)									01/31/19	11/30/21
4731-1-17	Instructional Staff									05/31/19	05/31/24
4731-1-18	Grounds for Suspension, Revocation or Denial of Certificate of Good Standing, Hearing Rights									03/30/20	03/30/25
4731-1-19	Probationary Status of a limited branch school									03/30/20	03/30/25
4731-1-24	Massage Therapy Continuing Education	03/09/16		10/26/16	04/24/19	04/29/19	06/05/19			Withdrawn 8/30/19	
4731-1-25	Determination of Equiv. Military Educ. For CT/MT	03/22/19	06/12/19	12/04/19						12/31/15	12/31/20
4731-2-01	Public Notice of Rules Procedure									12/07/17	12/07/22
4731-4-01	Criminal Records Checks - Definitions									09/30/19	09/30/24
4731-4-02	Criminal Records Checks									09/30/19	09/30/24
4731-5-01	Admission to Examinations									06/09/17	06/09/22
4731-5-02	Examination Failure; Inspection and Regrading									06/09/17	06/09/22
4731-5-03	Conduct During Examinations									06/09/17	06/09/22

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-5-04	Termination of Examinations									06/09/17	06/09/22
4731-6-01	Medical or Osteopathic Licensure: Definitions									07/31/19	07/31/24
4731-6-02	Preliminary Education for Medical and Osteopathic Licensure									07/31/19	07/31/24
4731-6-04	Demonstration of proficiency in spoken English									06/09/17	06/09/22
4731-6-05	Format of Medical and Osteopathic Examination									07/31/19	07/31/24
4731-6-14	Examination for physician licensure									07/31/19	07/31/24
4731-6-15	Eligibility for Licensure of National Board Diplomats and Medical Council of Canada Licentiates									07/31/19	07/31/24
4731-6-21	Application Procedures for Certificate Issuance; Investigation; Notice of Hearing Rights									07/31/19	07/31/24
4731-6-22	Abandonment and Withdrawal of Medical and Osteopathic Licensure Applications									07/31/19	07/31/24
4731-6-30	Training Certificates									07/31/19	07/31/24
4731-6-31	Limited Preexamination Registration and Limited Certification									07/31/19	07/31/24
4731-6-33	Special Activity Certificates									07/31/19	07/31/24
4731-6-34	Volunteer's Certificates									07/31/19	07/31/24
4731-6-35	Processing applications from service members, veterans, or spouses of service members or veterans.			12/04/19						07/31/19	07/31/24
4731-7-01	Method of Notice of Meetings									07/31/19	07/31/24
4731-8-01	Personal Information Systems	02/20/19								04/21/16	04/21/21
4731-8-02	Definitions									04/21/16	04/21/21
4731-8-03	Procedures for accessing confidential personal information									04/21/16	04/21/21
4731-8-04	Valid reasons for accessing confidential personal information									04/21/16	04/21/21
4731-8-05	Confidentiality Statutes									07/31/16	07/31/21
4731-8-06	Restricting & Logging access to confidential personal information									04/21/16	04/21/21

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-9-01	Record of Board Meetings; Recording, Filming, and Photographing of Meetings									09/15/19	06/17/24
4731-10-01	Definitions									02/02/18	02/02/23
4731-10-02	Requisite Hours of Continuing Medical Education for License Renewal or Reinstatement									05/31/18	05/31/23
4731-10-03	CME Waiver									05/31/18	05/31/23
4731-10-04	Continuing Medical Education Requirements for Restoration of a License									05/31/18	05/31/23
4731-10-05	Out-of-State Licensees									05/31/18	05/31/23
4731-10-06	Licensure After Cutoff for Preparation of Registration Notices									05/31/18	05/31/23
4371-10-07	Internships, Residencies and Fellowships									05/31/18	05/31/23
4371-10-08	Evidence of Continuing Medical Education									05/31/18	05/31/23
4731-10-09	Continuing Medical Education Requirement for Mid-term Licensees									05/31/18	05/31/23
4731-10-10	Continuing Medical Education Requirements Following License Restoration									05/31/18	05/31/23
4731-10-11	Telemedicine Certificates									05/31/18	05/31/23
4731-11-01	Controlled substances; General Provisions Definitions				11/14/19					12/23/18	12/07/22
4731-11-02	Controlled Substances - General Provisions	07/26/19								04/30/19	12/31/20
4731-11-03	Schedule II Controlled Substance Stimulants	07/26/19								12/31/15	12/31/20
4731-11-04	Controlled Substances: Utilization for Weight Reduction	07/26/19								02/29/16	02/28/21
4731-11-04.1	Controlled substances: Utilization for chronic weight management	07/26/19								12/31/15	12/31/20
4731-11-07	Research Utilizing Controlled Substances	07/26/19								09/30/15	09/30/20
4731-11-08	Utilizing Controlled Substances for Self and Family Members									08/17/16	08/17/21

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-11-09	Prescribing to persons the physician has never personally examined.									03/23/17	03/23/22
4731-11-11	Standards and procedures for review of "Ohio Automated Rx Reporting System" (OARRS).	07/26/19								12/31/15	12/31/20
4731-11-13	Prescribing of Opioid Analgesics for Acute Pain									08/31/17	08/31/22
4731-11-14	Prescribing for subacute and chronic pain			3/21/19	11/14/19					12/23/18	12/23/23
4731-12-01	Preliminary Education for Licensure in Podiatric Medicine and Surgery									06/30/17	06/30/22
4731-12-02	Standing of Colleges of Podiatric Surgery and Medicine									06/30/17	06/30/22
4731-12-03	Eligibility for the Examination in Podiatric Surgery and Medicine <b>(see note below)</b>									04/19/17	04/19/22
4731-12-04	Eligibility of Licensure in Podiatric Medicine and Surgery by Endorsement from Another State									06/30/17	06/30/22
4731-12-05	Application Procedures for Licensure in Podiatric Medicine and Surgery, Investigation, Notice of Hearing Rights.									06/30/17	06/30/22
4731-12-06	Visiting Podiatric Faculty Certificates									06/30/17	06/30/22
4731-12-07	Podiatric Training Certificates									06/30/17	06/30/22
4731-13-01	Conduct of Hearings - Representative; Appearances									07/31/16	07/31/21
4731-13-02	Filing Request for Hearing									07/31/16	07/31/21
4731-13-03	Authority and Duties of Hearing Examiners									09/30/18	07/31/21
4731-13-04	Consolidation										04/21/21
4731-13-05	Intervention										04/21/21
4731-13-06	Continuance of Hearing									09/30/16	09/30/21
4731-13-07	Motions									09/30/18	04/21/21
4731-13-07.1	Form and page limitations for briefs and memoranda									09/30/18	09/30/23
4731-13-08	Filing									07/31/16	07/31/21
4731-13-09	Service									07/31/16	07/31/21
4731-13-10	Computation and Extension of Time									07/31/16	07/31/21
4731-13-11	Notice of Hearings									07/31/16	07/31/21

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-13-12	Transcripts									07/31/16	07/31/21
4731-13-13	Subpoenas for Purposes of Hearing	05/09/19	06/12/19							07/31/16	07/31/21
4731-13-14	Mileage Reimbursement and Witness Fees										04/21/21
4731-13-15	Reports and Recommendations									07/31/16	07/31/21
4731-13-16	Reinstatement or Restoration of Certificate									07/31/16	07/31/21
4731-13-17	Settlements, Dismissals, and Voluntary Surrenders									04/21/16	04/21/21
4731-13-18	Exchange of Documents and Witness Lists									07/31/16	07/31/21
4731-13-20	Depositions in Lieu of Live Testimony and Transcripts in place of Prior Testimony									07/31/16	07/31/21
4731-13-20.1	Electronic Testimony									07/31/16	07/31/21
4731-13-21	Prior Action by the State Medical Board									04/21/16	04/21/21
4731-13-22	Stipulation of Facts									04/21/16	04/21/21
4731-13-23	Witnesses									09/14/16	09/30/21
4731-13-24	Conviction of a Crime									04/21/16	04/21/21
4731-13-25	Evidence									07/31/16	07/31/21
4731-13-26	Broadcasting and Photographing Administrative Hearings									04/21/16	04/21/21
4731-13-27	Sexual Misconduct Evidence									04/21/16	04/21/21
4731-13-28	Supervision of Hearing Examiners									04/21/16	04/21/21
4731-13-30	Prehearing Conference									04/21/16	04/21/21
4731-13-31	Transcripts of Prior Testimony									04/21/16	04/21/21
4731-13-32	Prior Statements of the Respondent									04/21/16	04/21/21
4731-13-33	Physician's Desk Physician									04/21/16	04/21/21
4731-13-34	Ex Parte Communication									07/31/16	07/31/21
4731-13-35	Severability									04/21/16	04/21/21
4731-13-36	Disciplinary Actions									07/31/16	07/31/21
4731-14-01	Pronouncement of Death									06/30/16	06/30/21
4731-15-01	Licensee Reporting Requirement; Exceptions									11/17/17	11/17/22
4731-15-02	Healthcare Facility Reporting Requirement									11/17/17	11/17/22
4731-15-03	Malpractice Reporting Requirement									11/17/17	11/17/22
4731-15-04	Professional Society Reporting									11/17/17	11/17/22



Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-17-06	Barrier Techniques										08/17/21
4731-17-07	Violations									11/09/16	11/30/21
4731-18-02	Use of Light Based Medical Devices	01/17/18	03/14/18							05/31/02	06/30/05
4731-18-03	Delegation of the Use of Light Based Medical Devices	01/17/18	03/14/18							06/30/00	06/30/05
4731-18-04	Delegation of the Use of Light Based Medical Devices; Exceptions	01/17/18	03/14/18							05/31/02	05/31/07
4731-20-01	Surgery Privileges of Podiatrist - Definition of Foot									05/31/18	05/31/23
4731-20-02	Surgery: Ankle Joint									05/31/18	05/31/23
4731-22-01	Emeritus Registration - Definitions									08/31/17	08/31/22
4731-22-02	Application									08/31/17	08/31/22
4731-22-03	Status of Registrant									05/12/17	05/12/22
4731-22-04	Continuing Education Requirements									05/12/17	05/12/22
4731-22-06	Renewal of Cycle of Fees									05/12/17	05/12/22
4731-22-07	Change to Active Status									08/31/17	08/31/22
4731-22-08	Cancellation of or Refusal to Issue an Emeritus Registration									05/12/17	05/12/22
4731-23-01	Delegation of Medical Tasks - Definitions									11/30/16	11/30/21
4731-23-02	Delegation of Medical Tasks									11/30/16	11/30/21
4731-23-03	Delegation of Medical Tasks: Prohibitions									08/17/16	08/17/21
4731-23-04	Violations									08/17/16	08/17/21
4731-24-01	Anesthesiologist Assistants - Definitions									07/31/19	07/31/24
4731-24-02	Anesthesiologist Assistants; Supervision									07/31/19	07/31/24
4731-24-03	Anesthesiologist Assistants; Enhanced Supervision									07/31/19	07/31/24
4731-24-05	Military Provisions Related to Certificate to Practice as an Anesthesiologist Assistant			12/04/19						07/31/19	07/31/24
4731-25-01	Office-Based Surgery - Definition of Terms										03/01/23
4731-25-02	General Provisions									05/31/18	05/31/23
4731-25-03	Standards for Surgery Using Moderate Sedation/Analgesia									05/31/18	08/31/23

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-25-04	Standards for Surgery Using Anesthesia Services									05/31/18	05/31/23
4731-25-05	Liposuction in the Office Setting									03/01/18	03/01/23
4731-25-07	Accreditation of Office Settings									05/31/18	05/31/23
4731-25-08	Standards for Surgery									09/30/19	09/30/24
4731-26-01	Sexual Misconduct - Definitions									06/30/16	06/30/21
4731-26-02	Prohibitions									06/14/16	06/14/21
4731-26-03	Violations; Miscellaneous									06/30/16	06/30/21
4731-27-01	Definitions									02/04/19	02/02/24
4731-27-02	Dismissing a patient from the medical practice									05/31/19	05/31/24
4731-27-03	Notice of termination of physician employment or physician leaving a practice, selling a practice, or retiring from the practice of medicine									05/31/19	05/31/24
4731-28-01	Mental or Physical Impairment									08/31/17	08/31/22
4731-28-02	Eligibility for confidential monitoring program									08/31/18	08/31/23
4731-28-03	Participation in the confidential monitoring program									08/31/18	08/31/23
4731-28-04	Disqualification from continued participation in the confidential monitoring program									08/31/18	08/31/23
4731-28-05	Termination of the participation agreement for the confidential monitoring program									08/31/18	08/31/23
4731-29-01	Standards and procedures for operation of a pain management clinic.									06/30/17	06/30/22
4731-30-01	Internal Management Definitions									09/23/18	09/23/23
4731-30-02	Internal Management Board Metrics	07/26/19								09/23/18	09/23/23
4731-30-03	Approval of Licensure Applications									10/17/19	10/17/24
4731-31-01	Requirements for assessing and granting clearance for return to practice or competition. (concussion rule)					04/10/19	05/13/19			11/30/19	11/30/24
4731-32-01	Definition of Terms									09/08/17	09/08/22
4731-32-02	Certificate to Recommend Medical Marijuana									09/08/17	09/08/22
4731-32-03	Standard of Care									09/08/17	09/08/22

Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
4731-32-04	Suspension and Revocation of Certificate to Recommend									09/08/17	09/08/22
4731-32-05	Petition to Request Additional Qualifying Condition or Disease									09/08/17	09/08/22
4731-33-01	Definitions	05/09/19								04/30/19	04/30/24
4731-33-02	Standards and procedure for withdrawal management for drug or alcohol addiction	05/09/19									
4731-33-03	Office-Based Treatment for Opioid Addiction									04/30/19	04/30/24
4731-33-04	Medication Assisted Treatment Using Naltrexone									04/30/19	04/30/24
4731-34-01	Standards and Procedures to be followed by physicians when prescribing a dangerous drug that may be administered by a pharmacist by injection.									07/31/19	07/31/24
4731-35-01	Consult Agreements	01/18/19		03/21/19	11/14/19						
4731-35-02	Standards for managing drug therapy	01/18/19		03/21/19	11/14/19						
4731-36-01	Military provisions related to education and experience requirements for licensure	03/22/19	06/12/19	12/04/19							
4731-36-02	Military provisions related to renewal of license and continuing education	03/22/19	06/12/19	12/04/19							
4731-36-03	Processing applications from service members, veterans, or spouses of service members or veterans.	03/22/19	06/12/19	12/04/19							
4759-2-01	Definitions	04/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-4-01	Applications	04/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-4-02	Preprofessional experience	04/19/18	07/11/18	09/25/18							08/28/24
4759-4-03	Examination	04/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-4-04	Continuing Education	08/27/19								11/30/19	11/30/24
4759-4-08	Limited permit	8/27/19 4/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-4-09	License certificates and permits	04/19/18	07/11/18	09/25/18						11/30/19	11/30/24
4759-4-12	<i>Consideration of military experience, education, training and term of service</i>	03/22/19	06/12/19	12/04/19						11/30/19	11/30/24
4759-4-13	<i>Temporary license for military spouse</i>	03/22/19	06/12/19	12/04/19						11/30/19	11/30/24





Rule Number	Rule Description	Sent for Initial Comment	Board Approval to File with CSI	CSI filing	CSI recommendation	JCARR filing	Rules Hearing	JCARR Hearing	Board Adoption	New Effective Date	Current Review Date
<b>NOTE RE: 4731-12-03 for next review</b>	what had been known as NBPME Parts I, II, and III will now be designated as the American Podiatric Medical Licensing Examination (APMLE) Parts I, II, and III										



**MEMORANDUM**

TO: Robert P. Giacalone, Acting Chair, Policy Committee  
Members, Policy Committee

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: CSI-Anti-Trust Referral-Proposed Light-Based Medical Device Rules

DATE: December 31, 2019

---

Attached please find the memorandum from the Common Sense Initiative Office regarding the proposed light-based medical device rules. CSI determined that the Board's proposed changes to the rules are consistent with a clearly articulated state policy and that the state policy is not merely a pretest for anticompetitive conduct that could be subject to state or federal antitrust law.

The next step is to file the rules with CSI for the regular rule review process.

**Action Requested: No Action Requested**

---



---

**MEMORANDUM**

**TO:** Ohio State Medical Board

**FROM:** Common Sense Initiative Office

**DATE:** December 13, 2019

**RE:** R.C. §107.56 Referral—*Proposed light-based medical device procedure rules*

---

The Ohio State Medical Board (“Medical Board”) has self-referred for review under Ohio Revised Code (R.C.) §107.56 proposed amendments to its administrative rules regarding the application of light-based medical devices. The Medical Board states that it seeks to protect patient safety by strengthening the supervision, education, and training requirements for the delegation of the application of light-based medical devices. This memo represents the Common Sense Initiative office’s (“CSI’s”) determination under that statute.

**ANALYSIS**

**I. The action is consistent with a clearly articulated state policy.**

The Medical Board’s proposed changes to the light-based medical device procedure rules are consistent with clearly articulated state policy. The Ohio General Assembly’s stated purpose for the Medical Board gives broad authority to set the scope of practice for physicians, physician assistants, and cosmetic therapists. Specifically, it establishes the Medical Board’s authority to regulate the practice of medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery, including physician assistants and the limited branches of medicine.<sup>1</sup>

Ohio law specifically tasks the Medical Board with establishing standards for a physician’s delegation of medical tasks to those who are not licensed or specifically authorized by law to perform the task.<sup>2</sup> In order to accomplish these purposes, the legislature grants the Medical Board broad rulemaking authority to “carry out the purposes of the Chapter.”<sup>3</sup> Establishing guidelines

---

<sup>1</sup> R.C. 4730.07; 4731.05; 4731.20; 4731.41.

<sup>2</sup> R.C. 4731.053.

<sup>3</sup> R.C. 4731.05.

for how its physician licensees delegate the application of light-based medical devices to the non-physician operators they supervise falls well within a clearly articulated state policy to establish physician scope of practice and delegation standards.

**II. The state policy is not merely a pretext for anticompetitive conduct that could be subject to state or federal antitrust law.**

The policy effectuated by the Medical Board's proposed administrative rule changes is not a pretext for anticompetitive conduct. The proposed delegation permission relates to the scope of practice of an occupation the Revised Code specifically grants authority for the Medical Board to regulate. It provides a framework within a physician's scope of practice for delegating procedures to the non-physician healthcare personnel a physician typically oversees. There is no evidence in the referral materials or interested party comments of the Medical Board taking action against license holders of occupations for which it does not set the scope of practice.

The Medical Board rule's definition of the application of light-based medical devices to the human body as the practice of medicine and surgery has been consistent since 2000, and its proposed rule amendments do not change the definition.<sup>4</sup> The practice of medicine and surgery has evolved significantly since 2000, though, and it has seen an increase in the frequency of medical and surgical procedures using light-based medical devices. As those procedures become more common, the Medical Board has tracked incidents of patient harm by professionals using light-based medical devices, and it is those incidents that have triggered the Medical Board's proposed rule changes.

The Medical Board cites evidence of harm associated with misapplication of light-based medical devices, including burns, scarring, and even eye injuries when physicians delegated the application to undertrained or undersupervised non-physician operators.<sup>5</sup> The Medical Board even points to its own disciplinary case of a physician who lost his license after the improper delegation of the application of a light-based medical device that resulted in injury to a patient.<sup>6</sup> In an effort to protect the public and licensed physicians, the Medical Board now has closely tailored its proposed rule amendments to broaden, strengthen, and clarify the guidelines its licensed physicians must follow when they delegate the application of light-based medical devices to the properly trained non-physician operators they oversee. The proposed amendments strike a balance between concerns about patient safety and a desire to make effective light-based procedures available in the practice of medicine.

---

<sup>4</sup> See OAC 4731-18-02, currently in effect and proposed edits as included in the Medical Board's referral.

<sup>5</sup> "Who is Qualified to Perform Laser Surgery and in What Setting," *Seminars in Plastic Surgery*, 2007; "Increased Risk of Litigation Associated with Laser Surgery by Nonphysician Operators," *JAMA Dermatology*, April 2014.

<sup>6</sup> Disciplinary case of Ali Kahn, M.D., cited in the Medical Board's referral.

## **Determination**

Accordingly, CSI determines that the proposed rules from the Medical Board are supported by and consistent with a clearly articulated state policy and are not a pretext for anticompetitive conduct.



## MEMORANDUM

TO: Board Members

FROM: Jonithon LaCross

RE: H.B. 263 Occupational Licensing – Criminal Convictions Multi-Board Response

DATE: 01/02/2020

---

In response to H.B. 263, Occupational Licensing – Criminal Convictions, the State Medical Board of Ohio staff met with bill sponsor Representative Koehler to address concerns with the legislation. The board staff concerns did not impact the Representatives position on the legislation.

Board staff collaborated with the Ohio Board of Pharmacy, Nursing Board, Chiropractic Board, Dental Board, and the Veterinary Medical Licensing Board to draft an amendment to Representative Koehler's office to address concerns raised by all of the boards.

The requested amendment details the following:

- Proposes exempting healthcare licensing agencies from section 9.79 and creating a new section (ORC 9.791) that specifically applies to healthcare licensing agencies.
- Proposes an unlimited lookback for the following convictions for healthcare licensing agencies:
  - "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code;
  - "Theft offense" has the same meaning as in section 2913.01 of the Revised Code.
  - "Offenses relating to domestic animals" means a violation of chapter 959 of the Revised Code [includes dog fighting, animal cruelty, etc.].
- Lists the specific crimes of concern to healthcare licensing boards in division (A). In addition, it incorporates the standard of "rational nexus" which was recently adopted by West Virginia as an occupational licensing standard.
- Removes references to good moral character and replaces with language that examines either of the following:
  - *A history or pattern of dishonest or unprofessional conduct; or*
  - *A history or pattern of criminal convictions demonstrating the individual could endanger the health, safety or welfare of a patient or client.*
- Extends the look-back from 5 years to 10 years.
- Specifies that the lookback period starts from: "...the date since the date of conviction or the release of the individual from the confinement, or the termination

of community control sanctions, post-release control, or probation, shock probation, parole, or shock parole imposed for that conviction, whichever is the later date.”

- Removes the additional requirements but specifies that any denial be in accordance with the provisions of ORC 119.
- Removes the provision that shifts the burden of proof to the licensing authority when denying licensure.
- Includes language that states: *Nothing in this section prohibits a healthcare licensing agency from issuing a restricted license based upon a conviction of, judicial finding of guilt of, or plea of guilty to an offense.*

The amendment is currently under consideration by Representative Koehler’s office. Please find below the entirety of the memo:

**Multi-Board Memo to Representative Koehler Addressing H.B. 263**

Ohio’s Healthcare Regulatory Boards have a responsibility to safeguard some of Ohio’s most vulnerable citizens. As such, the following boards are requesting the adoption of an amendment (starting on page 3 of this document) to the requirements in HB 263:

- State of Ohio Board of Pharmacy (ORC 4729, 3796)
  - Ohio Board of Nursing (ORC 4723)
  - Ohio State Dental Board (ORC 4715)
  - State Medical Board of Ohio – (ORC 4730, 4731, 4759, 4760, 4761, 4762, 4774, 4778)
  - Ohio Speech and Hearing Professionals Board (ORC 4744, 4753)
  - Ohio Veterinary Medical Licensing Board (ORC 4741)
  - Occupational Therapy, Physical Therapy, and Athletic Trainers Board (ORC 4755, 4779)
  - Counselors, Social Workers, and Marriage & Family Therapist Board (ORC 4757)
  - Ohio Board of Psychology (ORC 4732, 4783)
  - Ohio Chiropractic Board (ORC 4734)
  - Ohio Vision Professionals Board (ORC 4725)
- The healthcare licensing Boards represented in this proposed amendment comprise **only 10 percent** (65 out of 651 occupations) of the total licenses that would be impacted from this legislation.
  - It should also be noted that healthcare licensing Board’s rarely deny licensure based upon criminal convictions and that applicants are guaranteed appeal rights via the courts. The following table provides an overview of the number of licenses that were denied since 2015:

<b>Board</b>	<b>Occupational Licensure Denials (1/1/2015 – 12/1/2019)</b>
<b>State of Ohio Board of Pharmacy</b>	4*
<b>Ohio State Chiropractic Board</b>	5
<b>Ohio Veterinary Medical Licensing Board</b>	2
<b>State Dental Board of Ohio</b>	1

**9.791 – NEW SECTION – PROPOSED AMENDMENT**

(A) As used in this section:

(1) "License" means an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing authority to an individual by which the individual has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing authority has jurisdiction.

(2) "Healthcare licensing authority" means a state agency that issues licenses under the following chapters of the Revised Code: 3796., 4715., 4723., 4725., 4729., 4730., 4731., 4732., 4734., 4741., 4744., 4753., 4755., 4757., 4759., 4760., 4761., 4762., 4774., 4778., 4779., and 4783.

(3) "Offense of violence" has the same meaning as in section 2901.01 of the Revised Code and shall also include offenses that are substantially equivalent to any other state or the United States.

(4) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code and shall also include offenses that are substantially equivalent to any other state or the United States.

(5) "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code and shall also include offenses that are substantially equivalent to any other state or the United States.

(6) "Theft offense" has the same meaning as in section 2913.01 of the Revised Code and shall also include offenses that are substantially equivalent to any other state or the United States.

(7) "Offenses relating to domestic animals" means a violation of chapter 959 of the Revised Code and shall also include offenses that are substantially equivalent to any other state or the United States.

(B)(1) Except as provided in division (B)(2) and (D) of this section, a healthcare licensing authority shall not refuse to issue an initial license to an individual based solely on a conviction of, judicial finding of guilt of, or plea of guilty to an offense.

(2) A healthcare licensing authority may refuse to issue an initial license to an individual based upon a conviction of, judicial finding of guilt of, or plea of guilt either of the following:

(a) A felony or misdemeanor offense listed in division (A) of this section that bears a rational nexus to the individual's professional practice.

(b) A felony or misdemeanor offense not listed in division (A) of this section in any jurisdiction that bears a rational nexus to the individual's professional practice within ten years from the date of conviction or the release of the individual from the confinement, or

the termination of community control sanctions, post-release control, or probation, shock probation, parole, or shock parole imposed for that conviction, whichever is the later date, provided the individual was not convicted of, found guilty pursuant to a judicial finding of, and did not enter a plea of guilty to any other offense during the applicable ten-year period.

(C) Subject to the provisions in division (B)(2) of this section, a healthcare licensing authority may consider a conviction of, judicial finding of guilt of, or plea of guilty to an offense in determining whether to refuse to issue an initial license to an individual. In so doing, the healthcare licensing authority shall consider all of the following factors in its evaluation of whether the conviction, judicial finding of guilt, or plea of guilty results in the denial of the individual from receiving the license:

(a) The nature and seriousness of the offense for which the individual was convicted, found guilty pursuant to a judicial finding, or pleaded guilty;

(b) The passage of time since the individual committed the offense;

(c) The relationship of the offense to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation;

(d) Any evidence of mitigating rehabilitation or treatment undertaken by the individual including whether the individual has been issued a certificate of qualification for employment under section 2953.25 of the Revised Code or a certificate of achievement and employability under section 2961.22 of the Revised Code;

(e) Whether the denial of a license is reasonably necessary to ensure public safety.

(D) Nothing in this section prohibits a healthcare licensing agency from any of the following:

(1) Issuing a restricted or probationary license based upon a conviction of, judicial finding of guilt of, or plea of guilty to an offense;

(2) Refusing to issue an initial license if the healthcare licensing agency finds the individual to have a history or pattern of dishonesty or unprofessional conduct that bear a rational nexus to the individual's professional practice;

(3) Refusing to issue an initial license if the healthcare licensing agency finds the individual to have a history or pattern of criminal convictions that bear a rational nexus to the individual's professional practice and demonstrate the individual could endanger the health, safety or welfare of a patient or client.

(4) Considering either of the following when making a determination whether to issue a license to an individual:

(a) Past disciplinary action taken by the licensing authority against the individual;

(b) Past disciplinary action taken against the individual by an authority in another state that issues a license that is substantially similar to the license for which the individual applies.

(E) If a healthcare licensing authority refuses to issue an initial license to an individual pursuant this section, the licensing authority shall notify the individual in writing in accordance with the provisions of Chapter 119. of the Revised Code.

(F) A healthcare licensing authority shall adopt any rules that it determines are necessary to implement this section.

(G) This section does not apply to either of the following:

(1) Any position for which appointment requires compliance with section 109.77 of the Revised Code or in which an individual may satisfy the requirements for appointment or election by complying with that section; or

(2) Any position for which federal law requires disqualification from licensure or employment based on a conviction of, judicial finding of guilt of, or plea of guilty to an offense.

(H) Each healthcare licensing authority described in division (A)(2) of this section annually shall provide to the director of administrative services in accordance with division (D) of section 9.79 of the Revised Code.

### **Moral Character/Turpitude Definitions**

Maintain the removal of moral character/turpitude provisions in the healthcare licensing board’s sections of the ORC and replace with a provision that permits denial based upon either:

- *A history or pattern of criminal convictions that bear a rational nexus to the individual’s professional practice and demonstrate the individual could endanger the health, safety or welfare of a patient or client.*
- *A history or pattern of dishonesty or unprofessional conduct that bear a rational nexus to the individual’s professional practice;*

The following provides a chart of the current bill as introduce and the new amendment language:

<b>Current Proposal</b>	<b>Proposed Amendment (ORC 9.791)</b>	<b>Rationale</b>
<b>Includes all healthcare licensing Boards in proposed section 9.79 of the Revised Code. (Starting on Line 112)</b>	Propose exempting healthcare licensing agencies from section 9.79 and creating a new section (ORC 9.791) that specifically applies to healthcare licensing agencies.  <i>"Healthcare licensing authority" means a state agency that issues licenses under the following chapters</i>	As state previously, healthcare licensing boards have a responsibility to safeguard some of Ohio’s most vulnerable citizens. Therefore, the following Boards seek exemptions from the requirements in proposed ORC 9.79 and respectfully request inclusion into the proposed requirements of ORC 9.791.

	<p><i>of the revised code: 3796., 4715., 4723., 4725., 4729., 4730., 4731., 4732., 4734., 4741., 4744., 4753., 4755., 4757., 4759., 4760., 4761., 4762., 4774., 4778., 4779., and 4783.</i></p>	
<p><b>Only includes an unlimited lookback for an offense of violence or sexually oriented offense. (Starting on Line 190)</b></p>	<p>Propose an unlimited lookback for the following convictions for healthcare licensing agencies:</p> <ul style="list-style-type: none"> <li>▪ “Drug abuse offense” has the same meaning as in section 2925.01 of the Revised Code;</li> <li>▪ “Theft offense” has the same meaning as in section 2913.01 of the Revised Code.</li> <li>▪ “Offenses relating to domestic animals” means a violation of chapter 959 of the Revised Code [includes dog fighting, animal cruelty, etc.].</li> </ul> <p>Additionally, the amendment adds qualifiers to incorporate violations of other state and federal laws.</p>	<p>As individuals regulated by healthcare licensing boards have access to drugs, insurance information, protected health information, and animals, the healthcare licensing boards seeks an unlimited ability to lookback on the three offenses that are being proposed.</p> <p>Furthermore, violations in these categories must be qualified to take into account violations of state and federal laws that are substantially equivalent.</p>
<p><b>Requires the adoption of criminal disqualifying offenses. (Starting on Line 123)</b></p>	<p>The proposed amendment lists the specific crimes of concern to healthcare licensing boards in division (A). In addition, it incorporates the standard of “rational nexus” which was recently adopted by West Virginia as an occupational licensing standard.</p>	<p>Many healthcare licensing authorities do not have provisions that include automatic disqualifying offenses and compiling an exhaustive list would prove extremely difficult owing to the diversity of practice types and settings.</p> <p>Additionally, such a provision could handcuff Boards into granting a license they would otherwise not wish to grant.</p>

		<p>The facts of the offense often determine an agency's discretion while considering mitigating and aggravating circumstances and how they relate to an applicant's ability to practice a particular profession.</p> <p>It should be noted that licensing Boards that comply with ORC 9.78 are already required to permit a licensee the ability to submit offenses prior to applying to determine whether or not a license would be granted.</p>
<p><b>Prohibits a licensing agency from denying a license based upon "good moral character" or "moral turpitude." (Starting on Line 149)</b></p>	<p>Removes references to good moral character and replaces with language that examines either of the following:</p> <ul style="list-style-type: none"> <li>• <i>A history or pattern of dishonest or unprofessional conduct; or</i></li> <li>• <i>A history or pattern of criminal convictions demonstrating the individual could endanger the health, safety or welfare of a patient or client.</i></li> </ul>	<p>The bill, as proposed, does not contemplate a licensee who presents with multiple criminal convictions or other patterns of behavior, nor the ability of a board to even consider past offenses of a certain age, when related or similar conduct arises in a more recent, subsequent criminal action.</p>
<p><b>Requires a licensing agency use a standard of "clear and convincing" evidence for the denial of licensure. (Starting on Line 166)</b></p>	<p>The proposed amendment removes this provision for healthcare licensing agencies.</p>	<p>The standard of "clear and convincing" evidence has been rejected as inappropriate in an administrative action (Sanders v. Fleckner, 59 Ohio Law Abs. 135 (2d Dist. 1950)).</p>
<p><b>Except for offenses of violence or sexually oriented offenses, licensure can only be denied if a criminal conviction occurred in the previous 5-years.</b></p>	<p>As noted previously, the amendment proposes to include drug abuse offenses, theft offenses, and offenses relating to domestic animals to the unlimited look-back provision.</p>	<p>As individuals regulated by healthcare licensing boards have access to drugs, insurance information, protected health information, and animals, the healthcare licensing</p>

<p><b>(Starting on Line 184)</b></p>	<p>For all other criminal convictions, the amendment extends the look-back from 5 years to 10 years.</p> <p>It also specifies that the lookback period starts from: "...the date since the date of conviction or the release of the individual from the confinement, or the termination of community control sanctions, post-release control, or probation, shock probation, parole, or shock parole imposed for that conviction, whichever is the later date." This mirrors language found in Ohio Rules of Evidence 609.</p>	<p>boards seeks an unlimited ability to lookback on the three offenses that are being proposed.</p>
<p><b>Sets forth a process requiring certain notification process for denial of licensure. (Starting on Line 193)</b></p>	<p>The notification requirements in the proposed bill occur as part of the Chapter 119 administrative hearing process. The amendment removes the additional requirements but specifies that any denial be in accordance with the provisions of ORC 119.</p>	<p>Section (E) provides requirements for the process <b>after</b> a board refuses to issue an initial license. However, under ORC Chapter 119, an application is not refused until the applicant receives notice and has an opportunity for a hearing. For this reason, the requirement in section (E)(2) that the individual be notified of their right to a hearing after their application is refused does not make sense. Therefore, the healthcare regulatory boards are requesting this provision be removed and simply reference the 119 Administrative Hearing process.</p>
<p><b>Shifts the burden of proof to the licensing authority when denying licensure. (Starting on Line 210)</b></p>	<p>This provision is removed in the amendment. Ohio case law already provides an adequate burden on the board or agency.</p>	<p>Ohio case law already provides an adequate burden on the board or agency. Ohio case law requires that courts will affirm an order of a board or</p>

		<p>agency if it is supported by "substantial, reliable, and probative evidence." <i>Our Place, Inc. v. Ohio Liquor Control Commission</i>, 63 Ohio St.3d 570 (1992).  "Reliable evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true." "Probative evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue."  "Substantial evidence is evidence with some weight; it must have importance and value."</p>
<p><b>Does not include express language allowing the issuance of a limited or restricted license.</b></p>	<p>Amendment includes language that states:  <i>Nothing in this section prohibits a healthcare licensing agency from issuing a restricted license based upon a conviction of, judicial finding of guilt of, or plea of guilty to an offense.</i></p>	<p>The bill does not include express language for issuance of a probationary or limited license by a healthcare board so that a person can be issued a restricted license that may limit the work setting to one unrelated to the conviction or offense, for instance. Boards currently have the authority and regularly use their discretion to grant and limit licenses under appropriate circumstances.</p> <p>This allows a healthcare licensing board to piggyback on a court's requirements to make licensure contingent upon the terms of an agreement, such as probation or treatment in lieu.</p>



## MEMORANDUM

TO: Board Members

FROM: Jonithon LaCross

RE: HB432 Occupational License Reciprocity Bill Summary

DATE: 01/02/2020

---

### **HB432 Occupational License Reciprocity (Rep. Powell, Rep. Lang)**

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.

#### **Bill Summary**

- Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who holds an out-of-state occupational license.
  - Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who has a government certification, a private certification, or satisfactory work experience in a state that does not issue a license or government certification for the respective occupation.
  - Requires an applicant to submit to a criminal records check to receive a license or government certification under the bill if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to submit to a criminal records check to receive a license or government certification.
  - Allows a licensing authority to require an applicant to pass an examination on Ohio's laws and rules governing the applicable profession, occupation, or occupational activity if a licensing authority requires an applicant to pass the examination to receive a license or government certification under the applicable law.
  - Requires, if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to satisfy a financial responsibility requirement to receive a license or government certification, an applicant to satisfy the requirement to receive a license or government certification under the bill.
  - Prohibits a licensing authority from issuing or denying a license or government certification under the bill to the applicant while the applicant is the subject of certain pending complaints, allegations, or investigations. Requires a licensing authority to provide an applicant with a written decision to issue or reject a license or government certification under the bill within 60 days after receiving a complete application.
-

- Specifies that an applicant who is issued a license or government certification under the bill is subject to the laws regulating the practice of the applicable occupation or profession in Ohio and is subject to the licensing authority's jurisdiction.
- Requires that a license or government certification issued under the bill be considered a license or government certification issued under the laws regulating the practice of the applicable occupation or profession in Ohio. Specifies that provisions of law applicable to a license or government certification issued to an applicant who does not obtain a license or government certification under the bill apply in the same manner to licenses and government certifications issued under the bill.
- Prohibits a political subdivision from prohibiting an individual who holds a license or government certification issued by a state agency under the bill from engaging in the respective profession, occupation, or occupational activity in the political subdivision's jurisdiction.
- Requires a licensing authority to issue temporary training licenses under the bill.
- Exempts licenses from the bill that authorize an out-of-state professional to engage in a profession, occupation, or occupational activity for a limited time or on a limited basis and limits these licenses to individuals who are not Ohio residents.
- Exempts licenses from the bill that authorize a person to engage in a profession, occupation, or occupational activity as a volunteer.
- Requires each licensing authority to adopt rules as necessary to implement the bill.

**Status:** 12/11/2019 House State and Local Government, (First Hearing)



## MEMORANDUM

TO: Board Members

FROM: Jonithon LaCross

RE: SB246 Occupational License Reciprocity Summary

DATE: 01-02-2020

---

### **SB246 Occupational License Reciprocity (Sen. Roegner, 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.

#### **Bill Summary**

- Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who holds an out-of-state occupational license.
  - Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who has a government certification, a private certification, or satisfactory work experience in a state that does not issue a license or government certification for the respective occupation.
  - Requires an applicant to submit to a criminal records check to receive a license or government certification under the bill if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to submit to a criminal records check to receive a license or government certification.
  - Allows a licensing authority to require an applicant to pass an examination on Ohio's laws and rules governing the applicable profession, occupation, or occupational activity if a licensing authority requires an applicant to pass the examination to receive a license or government certification under the applicable law.
  - Requires, if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to satisfy a financial responsibility requirement to receive a license or government certification, an applicant to satisfy the requirement to receive a license or government certification under the bill.
  - Prohibits a licensing authority from issuing or denying a license or government certification under the bill to the applicant while the applicant is the subject of certain pending complaints, allegations, or investigations. Requires a licensing authority to provide an applicant with a written decision to issue or reject a license or government certification under the bill within 60 days after receiving a complete application.
-

- Specifies that an applicant who is issued a license or government certification under the bill is subject to the laws regulating the practice of the applicable occupation or profession in Ohio and is subject to the licensing authority's jurisdiction.
- Requires that a license or government certification issued under the bill be considered a license or government certification issued under the laws regulating the practice of the applicable occupation or profession in Ohio. Specifies that provisions of law applicable to a license or government certification issued to an applicant who does not obtain a license or government certification under the bill apply in the same manner to licenses and government certifications issued under the bill.
- Prohibits a political subdivision from prohibiting an individual who holds a license or government certification issued by a state agency under the bill from engaging in the respective profession, occupation, or occupational activity in the political subdivision's jurisdiction.
- Requires a licensing authority to issue temporary training licenses under the bill.
- Exempts licenses from the bill that authorize an out-of-state professional to engage in a profession, occupation, or occupational activity for a limited time or on a limited basis and limits these licenses to individuals who are not Ohio residents.
- Exempts licenses from the bill that authorize a person to engage in a profession, occupation, or occupational activity as a volunteer.
- Requires each licensing authority to adopt rules as necessary to implement the bill.

**Status:** 12/11/2019 Senate General Government and Agency Review , (First Hearing)



## Legislation Status Report

### **HB224 Nurse Anesthetists (Rep. Cross, Rep. Wilkins)**

Regarding the practice of certified nurse anesthetists.

**ORC Sections:** Am. 4723.43, 4729.01, and 4761.17 of the Revised Code and to amend the version of section 4729.01 of the Revised Code that is scheduled to take effect March 22, 2020

#### ***Bill Summary***

- With supervision and in the immediate presence of a physician, podiatrist, or dentist, a certified nurse anesthetist may administer anesthesia and perform anesthesia induction, maintenance, and emergence.
- With supervision, a certified nurse anesthetist may obtain informed consent for anesthesia care and perform preanesthetic preparation and evaluation, postanesthetic preparation and evaluation, post-anesthesia care, and clinical support functions.

**Status: 12/10/2019** - SUBSTITUTE BILL ACCEPTED, House Health, (Fifth Hearing)

The OSMA and OSA have reached a neutral position and advised the committee and sponsors.

**See separate briefing memo to the board.**

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

### **HB263 Occupational Licensing – Criminal Convictions (Rep. Koehler)**

#### **ORC Sections:**

To revise the initial occupational licensing restrictions applicable to individuals convicted of criminal offenses.

#### ***Bill Summary***

- Requires, within 180 days after the bill's effective date, a state licensing authority to adopt a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining a license.
  - Allows a state licensing authority to consider a listed offense when deciding whether an individual is disqualified from receiving an initial license, provided the state licensing authority considers the offense in light of specific factors supported by clear and convincing evidence.
-

- Prohibits a state licensing authority from considering a listed disqualifying offense when the offense occurred outside of time periods specified in the bill.
- Prohibits a state licensing authority from refusing to issue an initial license to an individual based solely on being charged with or convicted of a criminal offense or a nonspecific qualification such as “moral turpitude” or lack of “moral character.”

**Status:** 12/11/2019 BILL AMENDED, House Commerce and Labor, (Fourth Hearing)

**Amendment:** An Legislative Service Commission (LSC) staffer explained the amendment which includes some reporting requirements for the licensing boards to the Department of Administrative Services (DAS) regarding, among other data, information about the number of licenses granted and denied; a list of criminal offenses reported by individuals who were granted a license and a list for those denied. The amendment also gives the licensing boards the authority to consider past disciplinary action against the individual by them or by boards in other states.

The amendment also reduces the "look back" period from 10 to five years

Policy Matters Ohio, the ACLU gave proponent testimony and the Buckeye Institute gave interested party testimony.

Medical Board staff collaborated with the Ohio Board of Pharmacy, Nursing Board, Chiropractic Board, Dental Board, and the Veterinary Medical Licensing Board to draft an amendment to Representative Koehler’s office to address joint concerns.

**See separate briefing memo to board.**

### **HB341 Addiction Treatment Drugs (Rep. Ginter)**

Regarding the administration of drugs for addiction treatment.

**ORC Sections:** 4723.52, 4729.45, 4729.553, 4730.56, 4731.83

#### ***BILL SUMMARY***

- Authorizes a pharmacist to administer by injection any long-acting or extended-release drug prescribed by a physician to treat drug addiction, instead of limiting the pharmacist’s authority to the administration of opioid antagonists as under current law.
- Exempts places in which addiction treatment drugs are directly administered by prescribers, rather than self-administered by patients, from the State Board of Pharmacy’s office-based opioid treatment licensure.
- Provides that a patient whose addiction treatment drugs are directly administered by a prescriber is not to be counted when determining whether an office-based opioid treatment provider is required to be licensed by the Board.

**Status: 12/10/2019 BILL AMENDED,** House Health, (Fourth Hearing)

**Amendment:** Two amendments offered and accepted. AM1449x1 would remove silos to allow better sharing of information and limited access by federal agencies. AM1604 would replace certain language regarding addiction treatment drugs for consistency.

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

### **HB374 Massage Therapy License (Rep. Plummer, Rep. Manchester)**

To make changes to the massage therapy licensing law.

**ORC Sections:** 2927.17, 4731.04, 4731.15, 4731.41, 503.40, 503.41, 503.411, 503.42, 503.43, 503.44, 503.45, 503.46, 503.47, 503.48, 503.49, 503.50, 715.61

#### ***Bill Summary***

- Standardizes, for purposes of regulation by the State Medical Board, townships, and municipal corporations, terminology regarding massage therapy and individuals authorized to perform massage therapy.
- As part of that standardization:
  - Eliminates a township's authority to issue licenses to individuals who perform massage therapy;
  - Requires that if a township opts to regulate massage establishments, the regulations must require all massage therapy to be performed only by specified state-licensed professionals or massage therapy students;
  - Purports to require a municipal corporation that opts to regulate massage establishments to require all massage therapy to be performed by a state-licensed professional or a student, similar to township regulation.
- Regarding a township's authority to regulate massage establishments, eliminates a permit requirement and otherwise modifies permit application procedures.

**Status: 12/11/2019** House Commerce and Labor, (First Hearing, Sponsor testimony given)

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

## HB388 Regarding Out-Of-Network Care (Rep. Holmes)

Regarding out-of-network care

**ORC Sections:** 3902.50, 3902.51, 3902.52

### *Bill Summary*

- Requires an insurer to reimburse an out-of-network provider for unanticipated out-of-network care provided at an in-network facility.
- Requires an insurer to reimburse an out-of-network provider or emergency facility for emergency services provided at an out-of-network emergency facility.
- Prohibits a provider from balance billing a patient for unanticipated or emergency care as described above when that care is provided in Ohio. Establishes negotiation and arbitration procedures for disputes between providers and insurers regarding unanticipated or emergency out-of-network care.
- Requires a provider to disclose certain information to patients regarding the cost of other out-of-network services.

**Status:** 12/12/2019 House Finance, (Fifth Hearing)

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

## HB432 Occupational License Reciprocity (Rep. Powell, Rep. Lang)

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.

**Status:** 12/11/2019 House State and Local Government, Sponsor testimony (First Hearing)

**See separate briefing memo to board.**

## **HB455 Surgical Assistants (Rep. Smith, Rep. Kelly)**

To regulate the practice of surgical assistants.

**ORC Sections:** 4731.07, 4731.071, 4731.10, 4785.01, 4785.02, 4785.03, 4785.04, 4785.05, 4785.06, 4785.07

### ***Bill Summary***

- Creates a registration with the State Medical Board of Ohio for surgical assistants
- A surgical assistant must meet the following requirements:
  - Is at least eighteen years of age;
  - Has attained a high school degree or equivalent;
  - Is credentialed as a surgical assistant by the national board of surgical technology and surgical assisting or national commission for certification of surgical assistants.
- An applicant is eligible for a registration if:
  - The applicant practiced as a surgical assistant at a hospital or ambulatory surgical facility located in this state during any part of the six months that preceded the effective date of the bill;
  - The applicant successfully completed a training program for surgical assistants operated by a branch of the United States armed forces.
- If the state medical board determines that an applicant meets the requirements for a registration to practice as a surgical assistant, the secretary board shall issue the registration to the applicant.
- The registration shall be valid for a two-year period unless revoked or suspended, shall expire on the date that is two years after the date of issuance, and may be renewed for additional two-year periods
- An individual who holds a current, valid registration to practice as a surgical assistant may assist a physician in the performance of surgical procedures by engaging in one or more of the following activities:
  - Providing exposure; Maintaining hemostasis; Performing one or more of the following tasks: Making incisions; Closing or suturing surgical sites; Manipulating or removing tissue; Implanting surgical devices or drains; Suctioning surgical sites; Placing catheters; Clamping or cauterizing vessels or tissues; Applying dressings to surgical sites; Injecting or administering anesthetics; Any other tasks as directed by the physician.
- An individual may practice as a surgical assistant without holding a current, valid registration if all of the following apply:
  - The hospital or ambulatory surgical facility at which the individual practices or intends to practice has submitted to the state medical board, on behalf of its current and prospective employees, an application for a waiver from the requirement that surgical assistants be registered with the board;

- As part of the application, the hospital or facility submits evidence that it is located in an area of the state that experiences special health problems and physician practice patterns that limit access to surgical care;
- After receiving and reviewing the application, the board grants to the hospital's or facility's employees a waiver from the registration requirements;
- If the individual practices only at a hospital or ambulatory surgical facility that has been granted a waiver.
- The state medical board shall adopt rules establishing standards and procedures for the regulation of surgical assistants and shall do all of the following:
  - Establish application procedures and fees for the registration of surgical assistants; Establish registration renewal procedures and fees; Specify the reasons for which the board may refuse to issue or renew, suspend, or revoke a registration; Establish procedures for waiver applications submitted.
- The board may adopt any other rules it considers necessary. The rules may require applicants for registration or renewal to complete criminal records checks and continuing education hours.

**Status: 12/17/2019 Introduced**

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

### **SB105 Massage Therapy Licensing (Sen. Brenner)**

To make changes to the massage therapy licensing law.

**ORC Sections:** 2927.17, 4731.04, 4731.15, 4731.41, 503.40, 503.41, 503.411, 503.42, 503.43, 503.44, 503.45, 503.46, 503.47, 503.48, 503.49, 503.50, 715.61

#### ***BILL SUMMARY***

- Standardizes, for purposes of regulation by the State Medical Board, townships, and municipal corporations, terminology regarding massage therapy and individuals authorized to perform massage therapy.
- As part of that standardization:
  - Eliminates a township's authority to issue licenses to individuals who perform massage therapy;
  - Requires that if a township opts to regulate massage establishments, the regulations must require all massage therapy to be performed only by specified state-licensed professionals or massage therapy students;
  - Purports to require a municipal corporation that opts to regulate massage establishments to require all massage therapy to be performed by a state-licensed professional or a student, similar to township regulation.

- Regarding a township's authority to regulate massage establishments, eliminates a permit requirement and otherwise modifies permit application procedures.

**Status:** 09/18/2019 Senate Health, Human Services and Medicaid, (Second Hearing)

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:**

- Reviewed legislative drafts
- Advised Senator Brenner on the effects of the legislation on Massage Therapy regulation and licensure.

### **SB178 Podiatrists (Sen. Schuring)**

Regarding the authority of podiatrists to administer influenza vaccinations

**ORC Sections: 4731.512**

#### ***Bill Summary***

- Authorizes podiatrists to administer influenza vaccinations to individuals seven or older.

**Status:** 11/13/2019 Senate Health, Human Services and Medicaid, (Second Hearing)

**Medical Board position:** none taken.

**Medical Board staff communications to legislature:** none

### **SB246 Occupational License Reciprocity (Sen. Roegner, McColley) Companion HB432**

**ORC Sections:**

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.

**Status:** 12/11/2019 Senate General Government and Agency Review , (First Hearing)

**See separate briefing memo to Board on companion bill HB 432.**

# Legislative Report

January 3, 2020  
Prepared by: Jonithon  
LaCross

## MY TRACKED BILLS

### Bill Information

#### **HB29** DEXTROMETHORPHAN SALES *(KOEHLER K)*

To prohibit sales of dextromethorphan without a prescription to persons under age 18.

##### CURRENT STATUS

12/17/2019 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs

---

#### **HB46** STATE GOVT EXPENDITURE DATABASE *(GREENSPAN D)*

To require the Treasurer of State to establish the Ohio State Government Expenditure Database.

##### CURRENT STATUS

12/11/2019 - Senate General Government and Agency Review , (Sixth Hearing)

---

#### **HB61** HEALTH PROVIDER RESIDENTIAL INFO *(LANESE L, LISTON B)*

To include forensic mental health providers, mental health evaluation providers, and regional psychiatric hospital employees as individuals whose residential and familial information is exempt from disclosure under the Public Records Law.

##### CURRENT STATUS

6/27/2019 - **REPORTED OUT**, Senate Judiciary, (Second Hearing)

---

#### **HB63** PHARMACY BENEFIT MANAGERS *(LIPPS S, WEST T)*

Regarding pharmacy benefit managers, pharmacists, and the disclosure to patients of drug price information.

##### CURRENT STATUS

6/4/2019 - **REPORTED OUT**, House Health, (Fifth Hearing)

---

#### **HB68** HEARTBEAT BILL *(HOOD R, KELLER C)*

To generally prohibit an abortion of an unborn human individual with a detectable heartbeat and to create the Joint Legislative

Committee on Adoption Promotion and Support.

🚩 **CURRENT STATUS**

2/26/2019 - House Health, (First Hearing)

---

**HB133** **MILITARY-TEMPORARY LICENSURE** *(PERALES R, WEINSTEIN C)*

To require state occupational licensing agencies, under certain circumstances, to issue temporary licenses or certificates to members of the military and spouses who are licensed in another jurisdiction and have moved to Ohio for military duty.

🚩 **CURRENT STATUS**

10/2/2019 - Senate Transportation, Commerce and Workforce, (First Hearing)

---

**HB144** **NURSE EMPLOYMENT-MANDATORY OVERTIME** *(MANNING D)*

To prohibit a hospital from requiring a registered nurse or licensed practical nurse to work overtime as a condition of continued employment.

🚩 **CURRENT STATUS**

12/11/2019 - **PASSED BY HOUSE**; Vote 80-13

---

**HB165** **HEALTH EDUCATION STANDARDS** *(LISTON B, GALONSKI T)*

Regarding the adoption of health education standards.

🚩 **CURRENT STATUS**

6/18/2019 - House Primary and Secondary Education, (Third Hearing)

---

**HB177** **STANDARD CARE ARRANGEMENTS** *(BRINKMAN T)*

Regarding standard care arrangements entered into by advanced practice registered nurses and collaborating physicians or podiatrists; physician prescribing of schedule II controlled substances from convenience care clinics; and clearances by licensed health professionals of concussed student athletes.

🚩 **CURRENT STATUS**

11/19/2019 - **SUBSTITUTE BILL ACCEPTED**, House Health, (Fifth Hearing)

---

**HB205** **LEGAL IMMUNITY-OVERDOSE** *(GALONSKI T)*

To expand immunity from prosecution for certain drug offenses when a person obtains medical assistance for a drug overdose.

🚩 **CURRENT STATUS**

---

## HB224 NURSE ANESTHETISTS *(CROSS J, WILKIN S)*

Regarding the practice of certified registered nurse anesthetists.

### ■ CURRENT STATUS

12/10/2019 - **SUBSTITUTE BILL ACCEPTED**, House Health, (Fifth Hearing)

---

## HB231 FREE EPINEPHRINE PROGRAMS *(GREENSPAN D)*

To require the Department of Education to notify public and private schools of free epinephrine autoinjector programs and to enact the "Allison Rose Suhy Act" with regard to food allergy training for public schools and institutions of higher education.

### ■ CURRENT STATUS

5/21/2019 - House Primary and Secondary Education, (First Hearing)

---

## HB263 OCCUPATIONAL LICENSING-CRIMINAL CONVICTIONS *(KOEHLER K)*

To revise the initial occupational licensing restrictions applicable to individuals convicted of criminal offenses.

### ■ CURRENT STATUS

12/11/2019 - **BILL AMENDED**, House Commerce and Labor, (Fourth Hearing)

---

## HB323 PSYCHOLOGISTS-PRESCRIBING *(MANNING D)*

To authorize certain psychologists to prescribe drugs and therapeutic devices as part of the practice of psychology.

### ■ CURRENT STATUS

10/1/2019 - House Health, (First Hearing)

---

## HB341 ADDICTION TREATMENT DRUGS *(GINTER T)*

Regarding the administration of drugs for addiction treatment.

### ■ CURRENT STATUS

12/10/2019 - **BILL AMENDED**, House Health, (Fourth Hearing)

---

## HB374 MASSAGE THERAPY LICENSE *(PLUMMER P, MANCHESTER S)*

To make changes to the massage therapy licensing law.

**CURRENT STATUS**

12/11/2019 - House Commerce and Labor, (First Hearing)

---

**HB388 REGARDING OUT-OF-NETWORK CARE** (HOLMES A)

Regarding out-of-network care.

**CURRENT STATUS**

12/12/2019 - House Finance, (Fifth Hearing)

---

**HB432 OCCUPATIONAL LICENSE RECIPROCITY** (POWELL J, LANG G)

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.

**CURRENT STATUS**

12/11/2019 - House State and Local Government, (First Hearing)

---

**HB452 OCCUPATIONAL REGULATIONS** (WILKIN S, STEPHENS J)

To revise and streamline the state's occupational regulations.

**CURRENT STATUS**

12/17/2019 - Introduced

---

**HB455 SURGICAL ASSISTANTS** (SMITH J, KELLY B)

To regulate the practice of surgical assistants.

**CURRENT STATUS**

12/17/2019 - Introduced

---

**SB1 REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K)

To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.

**CURRENT STATUS**

6/12/2019 - House State and Local Government, (First Hearing)

---

## **SB7** TEMP STATE OCCUPATIONAL LICENSES-MILITARY *(LEHNER P, HACKETT R)*

Regarding temporary state occupational licenses for members of the military and their spouses.

### **CURRENT STATUS**

12/12/2019 - Consideration of Conference Committee Report; House Accepts Conference Committee Report, Vote 87-0

---

## **SB9** HEALTH PLAN CLAIM INFORMATION *(HUFFMAN M)*

To require health plan issuers to release certain claim information to group plan policyholders.

### **CURRENT STATUS**

12/11/2019 - **PASSED BY HOUSE**; Vote 87-6

---

## **SB14** DRUG PRICE INFORMATION DISCLOSURE *(MAHARATH T)*

Regarding pharmacy benefit managers, pharmacists, and the disclosure to patients of drug price information.

### **CURRENT STATUS**

4/3/2019 - Senate Insurance and Financial Institutions, (First Hearing)

---

## **SB20** CONTROLLED SUBSTANCES DISPOSAL *(MAHARATH T)*

Regarding the disposal of controlled substances.

### **CURRENT STATUS**

4/10/2019 - Senate Health, Human Services and Medicaid, (First Hearing)

---

## **SB25** MEDICAID WORK, EDUCATION REQUIREMENTS *(HUFFMAN M)*

Regarding work and education requirements for the Medicaid program.

### **CURRENT STATUS**

3/20/2019 - Senate Health, Human Services and Medicaid, (Second Hearing)

---

## **SB27** FETAL REMAINS-SURGICAL ABORTIONS *(UECKER J)*

To impose requirements on the final disposition of fetal remains from surgical abortions.

**CURRENT STATUS**

4/30/2019 - House Civil Justice, (Second Hearing)

**SB29 MEDICAID COPAYMENTS** (DOLAN M)

Regarding Medicaid copayment requirements.

**CURRENT STATUS**

2/19/2019 - Senate Health, Human Services and Medicaid, (Second Hearing)

**SB51 NON-OPIOID DIRECTIVES AND THERAPIES** (MAHARATH T)

Regarding non-opioid directives and non-opioid therapies.

**CURRENT STATUS**

5/1/2019 - Senate Health, Human Services and Medicaid, (First Hearing)

**SB59 NALOXONE DISPENSING WITHOUT PRESCRIPTION** (ANTONIO N)

To require the State Board of Pharmacy to educate license holders about the law authorizing naloxone dispensing without a prescription.

**CURRENT STATUS**

11/12/2019 - House Health, (First Hearing)

**SB61 NURSE ANESTHETISTS** (BURKE D)

Regarding the authority of certified registered nurse anesthetists to select, order, and administer certain drugs.

**CURRENT STATUS**

4/10/2019 - Senate General Government and Agency Review , (Second Hearing)

**SB97 COST ESTIMATES FOR HEALTH CARE** (HUFFMAN S)

Regarding the provision of cost estimates for scheduled health care services and health care services requiring insurer preauthorization.

**CURRENT STATUS**

12/10/2019 - House Health, (First Hearing)

## **SB105** MASSAGE THERAPY LICENSING *(BRENNER A)*

To make changes to the massage therapy licensing law.

### **CURRENT STATUS**

9/18/2019 - Senate Health, Human Services and Medicaid, (Second Hearing)

---

## **SB121** HEALTH EDUCATION STANDARDS *(SYKES V, KUNZE S)*

To require the State Board of Education to adopt health education standards and to require that only statewide venereal disease education standards and curriculum be approved by the General Assembly.

### **CURRENT STATUS**

12/3/2019 - Senate Education, (Fourth Hearing)

---

## **SB130** PROHIBIT CONVERSION THERAPY *(MAHARATH T)*

To prohibit certain health care professionals from engaging in conversion therapy when treating minor patients.

### **CURRENT STATUS**

9/18/2019 - Senate Health, Human Services and Medicaid, (First Hearing)

---

## **SB141** PHYSICIAN EMPLOYMENT CONTRACTS *(WILLIAMS S)*

To prohibit the use of noncompete provisions in physician employment contracts.

### **CURRENT STATUS**

5/15/2019 - Referred to Committee Senate Transportation, Commerce and Workforce

---

## **SB178** PODIATRISTS *(SCHURING K)*

Regarding the authority of podiatrists to administer influenza vaccinations.

### **CURRENT STATUS**

11/13/2019 - Senate Health, Human Services and Medicaid, (Second Hearing)

---

## **SB246** OCCUPATIONAL LICENSING *(ROEGNER K, MCCOLLEY R)*

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.

**CURRENT STATUS**

12/11/2019 - Senate General Government and Agency Review , (First Hearing)

---

**SB250** **PHYSICIANS-RADIATION EQUIPMENT** *(WILLIAMS S)*

Regarding the authority of a physician to operate certain radiation-generating equipment.

**CURRENT STATUS**

12/17/2019 - Referred to Committee Senate Health, Human Services and Medicaid

---

actionTRACK - Hannah News Service, Inc.



## MEMORANDUM

TO: Board Members

FROM: Jonithon LaCross

RE: House State and Local Government Occupational Licensure Recommendations

DATE: 01/02/2020

---

Per ORC 101.63, established by Senate Bill 255 from the 132nd General Assembly, all occupational licensing boards must be renewed once every six years. The House State and Local Government Committee was tasked with reviewing one third of all occupational licenses in the state. The committee heard testimony from eleven licensing entities including the State Medical Board.

The committee created a report detailing proposed changes in state occupational licensure. The report is a starting point in a larger conversation regarding occupational licensing requirements. The intent of the report is to assist the committee in drafting legislation that will help fix and clean-up licensure requirements to better accommodate Ohio's workforce.

The following recommendations were made by the committee members after hearing testimony from the board, speaking with interested parties, and examining surrounding states licensure requirements:

### **Eliminations**

- Eliminate Cosmetic Therapist License. This license does not provide a medical necessity but rather a personal preference. Therefore, individuals practicing cosmetic therapy can be certified through a national licensing entity if they choose.
  - Eliminate Genetic Counselor License. This license does not provide a medical necessity but rather a personal preference. Individuals practicing genetic counseling can be certified through a national licensing entity if they choose.
-

- Eliminate Acupuncturist/Oriental Medicine Practitioner License. This license does not provide a medical necessity but rather a personal preference. Individuals practicing acupuncturist or oriental medicine can be certified through a national licensing entity if they choose.

### **Other Changes**

- Change Physician License continuing education volunteer requirements to permit the individual to satisfy not more than ten hours, previously three, of the person's continuing education by providing health care services as a volunteer. Permit the board to issue continuing education credit at the rate of one credit hour for every five hours spent providing health care services as a volunteer. This change improves the organization and coordination of free clinics.

Board President Dr. Schottenstein spoke to Representative Butler regarding the recommended physician continuing medical education volunteer hour change and Representative Butler has proposed the following alternative for consideration by the board:

- 1) Implement 20 to 25 hours of Category 2 Continuing Medical Education and allow physicians to satisfy the Category 2 CME by certified volunteer hours.
- 2) This change would require a change in the mandatory 50 hours in statute and the creation of Category 2 CME in rule.

### **Current Licensure Requirements**

#### ***Cosmetic Therapist:***

To be eligible to receive a license to practice as a Cosmetic Therapist, an applicant shall demonstrate to the board that the applicant meets all of the following requirements:

- 1) Evidence that the applicant is at least eighteen years of age and of good moral character;
- 2) Evidence that the applicant has attained high school graduation or its equivalent;
- 3) Evidence that the applicant holds one of the following:
  - a) A diploma or certificate from a school, college, or institution in good standing as determined by the board, showing the completion of the required courses of instruction;

- b) A diploma or certificate from a school, college, or institution in another state or jurisdiction showing completion of a course of instruction that meets course requirements determined by the board through rules adopted under section 4731.05 of the Revised Code;
- c) 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 or cosmetic therapy.
- 4) Evidence that the applicant has successfully passed an examination, prescribed in rules described in section 4731.16 of the Revised Code, to determine competency to practice the applicable limited branch of medicine;
- 5) An attestation that the information submitted under this section is accurate and truthful and that the applicant consents to release of information;
- 6) Any other information the board requires.

***Genetic Counselor:***

To be eligible to receive a license to practice as a genetic counselor, an applicant shall demonstrate to the board that the applicant meets all of the following requirements:

- 1) Is at least eighteen years of age and of good moral character;
- 2) Except as provided in division (B)(2) of this section, has attained a master's degree or higher degree from a genetic counseling graduate program accredited by the American board of genetic counseling;
- 3) Is a certified genetic counselor;
- 4) Has satisfied any other requirements established by the board in rules adopted under section 4778.12 of the Revised Code.

***Acupuncturist/Oriental Medicine Practitioner:***

To be eligible to receive a license to practice as an Acupuncturist/Oriental Medicine Practitioner, an applicant shall demonstrate to the board that the applicant meets all of the following requirements:

- 1) The applicant shall submit evidence satisfactory to the board that the applicant is at least eighteen years of age and of good moral character;
- 2) In the case of an applicant seeking a license to practice as an oriental medicine practitioner, the applicant shall submit evidence satisfactory to the board of both of the following:
  - a) That the applicant holds a current and active designation from the national certification commission for acupuncture and oriental medicine as either a diplomate in oriental medicine or diplomate of acupuncture and Chinese herbology;
  - b) That the applicant has successfully completed, in the two-year period immediately preceding application for the license to practice, one course approved by the commission on federal food and drug administration dispensary and compounding guidelines and procedures;
- 3) In the case of an applicant seeking a license to practice as an acupuncturist, the applicant shall submit evidence satisfactory to the board that the applicant holds a current and active designation from the national certification commission for acupuncture and oriental medicine as a diplomate in acupuncture.
- 4) The applicant shall demonstrate to the board proficiency in spoken English.

***Continuing Medical Education:***

- A licensee must complete biennially not less than fifty hours of continuing medical education;
- A licensee may satisfy not more than three hours of continuing education by providing health care services as a volunteer.

Currently the Ohio House of Representatives has not introduced legislation incorporating the recommended changes. However, the House has introduced HB452 – Occupational Regulations, which states that the General Assembly intends to enact legislation revising and streamlining the state's occupational regulations to better accommodate Ohio's workforce.

Respectfully,



Jonithon LaCross  
Legislative Liaison  
State Medical Board of Ohio



## MEMORANDUM

TO: Board Members

FROM: Jonithon LaCross

RE: H.B. 224 Nurse Anesthetists Amendment Summary

DATE: 01/02/2020

---

The Ohio Legislature introduced and accepted an amendment to H.B. 224, regarding the practice of certified nurse anesthetists. The interested parties involved in the legislation have changed their positions to neutral. The amendment includes the following:

- With supervision and in the immediate presence of a physician, podiatrist, or dentist, a certified nurse anesthetist may administer anesthesia and perform anesthesia induction, maintenance, and emergence.
  - With supervision, a certified nurse anesthetist may obtain informed consent for anesthesia care and perform preanesthetic preparation and evaluation, postanesthetic preparation and evaluation, post anesthesia care, and clinical support functions.
  - When performing clinical support functions a certified registered nurse anesthetist may direct a registered nurse, licensed practical nurse, or respiratory therapist to provide supportive care, including monitoring vital signs, conducting electrocardiograms, and administering intravenous fluids, if the nurse or therapist is authorized by law to provide such care.
  - May direct a nurse or therapist to administer treatments, drugs, and intravenous fluids to treat conditions related to the administration of anesthesia if the nurse or therapist is authorized by law to administer treatments, drugs, and intravenous fluids and a physician, podiatrist, or dentist ordered the treatments, drugs, and intravenous fluids.
  - During the time period that begins on a patient's admission for a surgery or procedure to a health care facility where the certified registered nurse anesthetist practices and ends with the patient's discharge from recovery, the nurse may engage in one or more of the following activities:
    - Perform and document evaluations and assessments, which may include ordering and evaluating one or more diagnostic tests for conditions related to the administration of anesthesia;
    - As necessary for patient management and care, select, order and administering treatments, drugs, and intravenous fluids for conditions related to the administration of anesthesia.
  - As necessary for patient management and care, direct registered nurses, licensed practical nurses, and respiratory therapists to perform either or both of the following activities:
-

- Provide supportive care, including monitoring vital signs, conducting electrocardiograms, and administering intravenous fluids;
  - Administer treatments, drugs, and intravenous fluids to treat conditions related to the administration of anesthesia.
- A certified registered nurse anesthetist may not engage in one or more of the activities listed above unless:
    - The nurse is physically present at the health care facility when performing the activities;
    - The nurse's supervising physician, podiatrist, or dentist is physically present at the health care facility where the nurse is performing the activities.
- The health care facility where the nurse practices has adopted a written policy developed by the facility's medical, nursing, and pharmacy directors.
  - The bill does not authorize a certified registered nurse anesthetist to prescribe a drug for use outside of the health care facility where the nurse practices.
  - A written policy adopted by a health care facility shall establish standards and procedures to be followed by certified registered nurse anesthetists when performing one or more of the following activities in the health care facility:
    - Selecting, ordering, and administering treatments, drugs, and intravenous fluids; Ordering diagnostic tests and evaluating those tests; Directing registered nurses, licensed practical nurses, and respiratory therapists to perform activities.
  - The health care facility shall not authorize a certified registered nurse anesthetist to select, order, or administer any drug that a supervising physician, podiatrist, or dentist is not authorized to prescribe.
  - If a supervising physician, podiatrist, or dentist or facility makes a determination that it is not in a patient's best interest for the nurse to perform an activity, the patient's medical or electronic health record shall indicate that the nurse is prohibited from performing the activity.
  - When practicing under the order of a certified registered nurse anesthetist, a person's administration of medication is limited to the drugs that the nurse is authorized to order or direct the person to administer.



## MEMORANDUM

TO: Robert Giacalone, Acting Chair, Policy Committee  
Members, Policy Committee

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: FAQs regarding Prescribing to Patients after office closure

DATE: December 31, 2019; Revised January 3, 2020

---

The Board has become aware of physicians who have closed their practices due to criminal charges or other sudden, unanticipated events. These closures leave large numbers of patients who are being prescribed controlled substances and medication assisted treatment without physicians to oversee their care. Prescribers have concerns in taking over the prescribing for patients in these situations due to the prior prescriptions and the possible need to wean the patients from high doses.

The Board has been asked to provide a statement to address these prescriber concerns. The Policy Committee reviewed this issue in December 2019 and recommended that these concerns be addressed through responses to Frequently Asked Questions.

The following is a draft for review.

Frequently Asked Question:

**The office of a prescriber in my area was suddenly closed due to criminal charges related to prescribing. There are many patients in my community who are in need of medical care to manage their controlled substance prescriptions. I would like to provide care to these patients but I am concerned that prescribing to patients who are already on high doses will jeopardize my license. What are the Medical Board's requirements in these situations?**

**Proposed response:**

The State Medical Board is aware of the challenges facing prescribers who are undertaking care of patients in sudden office closure situations. In those situations, the Board understands that the prescriber may have some patients for which the prescribing is not typical of their regular practice. The State Medical Board of Ohio has developed detailed rules regarding prescribing of controlled substances with a focus on patient safety. The Board expects the physician to appropriately document the rationale for medication choice and dosage and to make reasonable attempts to comply with all applicable rules while the patient is being weaned from high doses. The Board will not initiate a disciplinary action for prescribers who are following an appropriate weaning program that brings the patient in compliance within six

---

months. Prescribers should also consider whether it is necessary to refer the patient for treatment for substance abuse disorder.

This response applies only to those situations where prescribers are undertaking care of patients following a sudden office closure.

The Medical Board's rules on acute, subacute and chronic prescribing and OARRS may be accessed [here](#).

**The office of a prescriber providing medication assisted treatment was suddenly closed due to criminal charges related to prescribing. There are many patients in my community who are in need of care and management of medication assisted treatment. I have obtained a DEA waiver to provide medication assisted treatment. Are there other requirements I must follow in treating these patients?**

The Medical Board has rules regarding office-based opioid treatment which means medication-assisted treatment in a private office or public sector clinic that is not otherwise regulated which may be accessed [here](#). Any location where a prescriber is treating more than thirty individuals for opioid dependence or addiction using a controlled substance must obtain a license as a terminal distributor of dangerous drugs with an office-based opioid treatment (OBOT) classification. More information regarding the terminal distributor license may be accessed [here](#).

**Action Requested: Provide comments regarding the draft FAQs.**

## **4731-11-11 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](#) 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.

(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 and 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 and 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.

Replaces: 4731-11-11

Effective: 12/31/2015

Five Year Review (FYR) Dates: 12/31/2020

Promulgated Under: [119.03](#)

Statutory Authority: [4731.05](#), [4731.055](#)

Rule Amplifies: [4731.055](#)

Prior Effective Dates: 11/30/11

## **4731-11-13 Prescribing of opiate analgesics for acute pain.**

(A) For the treatment of acute pain, the physician shall comply with the following:

(1) Extended-release or long-acting opioid analgesics shall not be prescribed for treatment of acute pain;

(2) Before prescribing an opioid analgesic, the physician shall first consider non- opioid treatment options. If opioid analgesic medications are required as determined by a history and physical examination, the physician shall prescribe for the minimum quantity and potency needed to treat the expected duration of pain, with a presumption that a three-day supply or less is frequently sufficient and that limiting the duration of opioid use to the necessary period will decrease the likelihood of subsequent chronic use or dependence;

(3) In all circumstances where opioid analgesics are prescribed for acute pain:

(a) Except as provided in paragraph (B) of this rule, the duration of the first opioid analgesic prescription for the treatment of an episode of acute pain shall be:

(i) For adults, not more than a seven-day supply with no refills;

(ii) For minors, not more than a five-day supply with no refills. A physician shall comply with section [3719.061](#) of the Revised Code, including but not limited to obtaining from the parent, guardian, or another adult who is authorized to consent to the minor's medical treatment written consent prior to prescribing an opioid analgesic to a minor;

(iii) The seven-day limit for adults and five-day limit for minors may be exceeded for pain that is expected to persist for longer than seven days based on the pathology causing the pain. In this circumstance, the reason that the limits are being exceeded and the reason that a non-opioid medication was not appropriate to treat the patient's conditions shall be documented in the patient's medical record. The number of days of the prescription shall not exceed the amount required to treat the expected duration of the pain as noted in paragraph (A) (2) of this rule; and

(iv) If a patient is allergic to or otherwise unable to tolerate the initially prescribed opioid medication, a prescription for a different, appropriate opioid may be issued at any time during the initial seven or five-day dosing period and shall be subject to all other provisions of this rule. The allergy and/or intolerance shall be documented in the patient's medical record. The patient or the minor patient's parent, guardian or another adult who is authorized to consent to the minor's medical treatment must be provided education of the safe disposal of the unused medication.

(b) The patient, or a minor's parent or guardian, shall be advised of the benefits and risks of the opioid analgesic, including the potential for addiction, and the advice shall be documented in the patient's medical record; and

(c) The total morphine equivalent dose (MED) of a prescription for opioid analgesics for treatment of acute pain shall not exceed an average of thirty MED per day, except when all of the following apply:

(i) The patient suffers from medical conditions, surgical outcomes or injuries of such severity that pain cannot be managed within the thirty MED average limit as determined by the treating physician based upon prevailing standards of medical care, such as:

(a) Traumatic crushing of tissue;

(b) Amputation;

(c) Major orthopedic surgery;

(d) Severe burns

(ii) The physician determines that exceeding the thirty MED average limit is necessary based on the physician's clinical judgment and the patient's needs.

(iii) The physician shall document in the patient's medical record the reason for exceeding the thirty MED average and the reason it is the lowest dose consistent with the patient's medical condition.

(iv) Only the prescribing physician for the conditions in paragraph (A)(3) (c)(i) of this rule may exceed the thirty MED average. The prescribing physician shall be held singularly accountable for prescriptions that exceed the thirty MED average.

(v) In circumstances when the thirty MED average is exceeded, the dose shall not exceed the dose required to treat the severity of the pain as noted in paragraph (A) (2) of this rule.

(d) Prescriptions that exceed the five or seven day supply or thirty MED average daily dose are subject to additional review by the state medical board. The dosage, days supplied, and condition for which the opioid analgesic is prescribed will be considered as part of this additional review.

(B) The requirements of paragraph (A) of this rule apply to treatment of acute pain and do not apply when an opioid analgesic is prescribed:

(1) To an individual who is a hospice patient or in a hospice care program;

(2) To an individual receiving palliative care;

(3) To an individual who has been diagnosed with a terminal condition; or

(4) To an individual who has cancer or another condition associated with the individual's cancer or history of cancer.

(C) This rule does not apply to prescriptions for opioid analgesics for the treatment of opioid addiction utilizing a schedule III, IV or V controlled substance narcotic that is approved by the federal drug administration for opioid detoxification or maintenance treatment.

(D) This rule does not apply to inpatient prescriptions as defined in Chapter 4729. of the Revised Code.

Effective: 8/31/2017

Five Year Review (FYR) Dates: 08/31/2022

Promulgated Under: [119.03](#)

Statutory Authority: [3719.062](#), [4731.05](#)

Rule Amplifies: [3719.062](#)

## **4731-11-14 Prescribing for subacute and chronic pain.**

(A) Prior to treating, or continuing to treat subacute or chronic pain with an opioid analgesic, the physician shall first consider and document non-medication and non-opioid treatment options.

(1) If opioid analgesic medications are required as determined by a history and physical examination, the physician shall prescribe for the minimum quantity and potency needed to treat the expected duration of pain and improve the patient's ability to function.

(2) The physician shall comply with the requirements of rule [4731-11-02](#) of the Administrative Code.

(B) Before prescribing an opioid analgesic for subacute or chronic pain, the physician shall complete or update and document in the patient record assessment activities to assure the appropriateness and safety of the medication including:

(1) History and physical examination including review of previous treatment and response to treatment, patient's adherence to medication and non-medication treatment, and screening for substance misuse or substance use disorder;

(2) Laboratory or diagnostic testing or documented review of any available relevant laboratory or diagnostic test results. If evidence of substance misuse or substance use disorder exists, diagnostic testing shall include urine drug screening;

(3) Review the results of an OARRS check in compliance with rule [4731-11-11](#) of the Administrative Code;

(4) A functional pain assessment which includes the patient's ability to engage in work or other purposeful activities, the pain intensity and its interference with activities of daily living, quality of family life and social activities, and the physical activity of the patient;

(5) A treatment plan based upon the clinical information obtained, to include all of the following components:

(a) Diagnosis;

(b) Objective goals for treatment;

(c) Rationale for the medication choice and dosage; and

(d) Planned duration of treatment and steps for further assessment and follow-up.

(6) Discussion with the patient or guardian regarding:

(a) Benefits and risks of the medication, including potential for addiction and risk of overdose; and

(b) The patient's responsibility to safely store and appropriately dispose of the medication.

(7) The physician shall offer a prescription for naloxone to the patient receiving an opioid analgesic prescription under any of the following circumstances:

(a) The patient has a history of prior opioid overdose;

(b) The dosage prescribed exceeds a daily average of eighty MED or at lower doses if the patient is co-prescribed a benzodiazepine, sedative hypnotic drug, carisprodal, tramadol, or gabapentin; or

(c) The patient has a concurrent substance use disorder.

(C) Prior to increasing the opioid dosage to a daily average of fifty MED or greater the physician shall complete and document the following in the patient's medical record:

(1) The physician shall review and update the assessment completed in paragraph (B) of this rule, if needed. The physician may rely on an appropriate assessment completed within a reasonable time if the physician is satisfied

that he or she may rely on that information for purposes of meeting the further requirements of this chapter of the Administrative Code;

(2) The physician shall update or formulate a new treatment plan, if needed;

(3) The physician shall obtain from the patient or the patient's guardian written informed consent which includes discussion of all of the following:

(a) Benefits and risks of the medication, including potential for addiction and risk of overdose.

(b) The patient's responsibility to safely store and appropriately dispose of the medication.

(4) Except when the patient was prescribed an average daily dosage that exceeded fifty MED before the effective date of this rule, the physician shall document consideration of the following:

(a) Consultation with a specialist in the area of the body affected by the pain;

(b) Consultation with a pain management specialist;

(c) Obtaining a medication therapy management review by a pharmacist; and

(d) Consultation with a specialist in addiction medicine or addiction psychiatry, if aberrant behaviors indicating medication misuse or substance use disorder are noted.

(5) The physician shall consider offering a prescription for naloxone to mitigate risk of overdose.

(D) Prior to increasing the opioid dosage to a daily average of eighty MED or greater, the physician shall complete all of the following:

(1) Enter into a written pain treatment agreement with the patient that outlines the physician's and patient's responsibilities during treatment and requires the patient or patient guardian's agreement to all of the following provisions:

(a) Permission for drug screening and release to speak with other practitioners concerning the patient's condition or treatment;

(b) Cooperation with pill counts or other checks designed to assure compliance with the treatment plan and to minimize the risk of misuse or diversion;

(c) The understanding that the patient shall only receive opioid medications from the physician treating the chronic pain unless there is written agreement among all of the prescribers of opioids outlining the responsibilities and boundaries of prescribing for the patient; and

(d) The understanding that the dosage may be tapered if not effective or if the patient does not abide by the treatment agreement.

(2) Offer a prescription for naloxone to the patient as described in paragraph (B) of this rule.

(3) Except when the patient was prescribed an average daily dosage that exceeded eighty MED before the effective date of this rule, obtain at least one of the following based upon the patient's clinical presentation:

(a) Consultation with a specialist in the area of the body affected by the pain;

(b) Consultation with a pain management specialist;

(c) Obtain a medication therapy management review; or

(d) Consultation with a specialist in addiction medicine or addiction psychiatry if aberrant behavior indicating medication misuse or substance use disorder may be present.

(E) The physician shall not prescribe a dosage that exceeds an average of one hundred twenty MED per day. This prohibition shall not apply in the following circumstances:

- (1) The physician holds board certification in pain medicine or board certification in hospice and palliative care;
- (2) The physician has received a written recommendation for a dosage exceeding an average of one hundred twenty MED per day from a board certified pain medicine physician or board certified hospice and palliative care physician who based the recommendation on a face-to-face visit and examination of the patient. The prescribing physician shall maintain the written recommendation in the patient's record; or
- (3) The patient was receiving an average daily dose of one hundred twenty MED or more prior to the effective date of this rule. The physician shall follow the steps in paragraph (E)(2) of this rule prior to escalating the patient's dose.

(F) During the course of treatment with an opioid analgesic at doses below the average of fifty MED per day, the physician shall provide periodic follow-up assessment and documentation of the patient's functional status, the patient's progress toward treatment objectives, indicators of possible addiction, drug abuse or drug diversion and the notation of any adverse drug effects.

(G) During the course of treatment with an opioid analgesic at doses at or above the average of fifty MED per day, the physician shall complete and document in the patient record the following no less than every three months:

- (1) Review of the course of treatment and the patient's response and adherence to treatment.
- (2) The assessment shall include a review of any complications or exacerbation of the underlying condition causing the pain through appropriate interval history, physical examination, any appropriate diagnostic tests, and specific treatments to address the findings.
- (3) The assessment of the patient's adherence to treatment including any prescribed non-pharmacological and non-opioid treatment modalities;
- (4) Rationale for continuing opioid treatment and nature of continued benefit, if present.
- (5) The results of an OARRS check in compliance with rule [4731-11-11](#) of the Administrative Code.
- (6) Screening for medication misuse or substance use disorder. Urine drug screen should be obtained based on clinical assessment of the physician with frequency based upon presence or absence of aberrant behaviors or other indications of addiction or drug abuse.
- (7) Evaluation of other forms of treatment and the tapering of opioid medication if continued benefit cannot be established.

(H) This rule does not apply to the physician who prescribes an opioid in any of the following situations:

- (1) The medication is for a patient in hospice care.
- (2) The patient has terminal cancer or another terminal condition, as that term is defined in section [2133.01](#) of the Revised Code.

(I) This rule does not apply to inpatient prescriptions as defined in Chapter 4729. of the Revised Code.

Replaces: 4731-21-02, 4731-21-06

Effective: 12/23/2018

Five Year Review (FYR) Dates: 12/23/2023

Promulgated Under: [119.03](#)

Statutory Authority: [4731.052](#), [4731.05](#), [4730.39](#), [4730.07](#), [3719.062](#)

Rule Amplifies: [3719.062](#), [4731.052](#), [4730.39](#)

Prior Effective Dates: 11/11/1998, 11/30/2008, 8/31/2017

## Chapter 4731-33 Opioid Treatment

### 4731-33-01 Definitions.

(A) "Office-based opioid treatment" or "OBOT" means medication-assisted treatment, as that term is defined in this rule, in a private office or public sector clinic that is not otherwise regulated, by practitioners authorized to prescribe outpatient supplies of medications approved by the United States food and drug administration for the treatment of opioid addiction or dependence, prevention of relapse of opioid addiction or dependence, or both. OBOT includes treatment with all controlled substance medications approved by the United States food and drug administration for such treatment. OBOT does not include treatment that occurs in the following settings:

- (1) A state or local correctional facility, as defined in section [5163.45](#) of the Revised Code;
- (2) A hospital, as defined in section [3727.01](#) of the Revised Code;
- (3) A provider certified to provide residential and inpatient substance use disorder services, including withdrawal management, by the Ohio department of mental health and addiction services;
- (4) An opioid treatment program certified by SAMHSA and accredited by an independent SAMHSA-approved accrediting body; or
- (5) A youth services facility, as defined in section [103.75](#) of the Revised Code.

(B) "SAMHSA" means the United States substance abuse and mental health services administration.

(C) "Medication-assisted treatment" means alcohol or drug addiction services that are accompanied by medication that has been approved by the United States food and drug administration for the treatment of substance use disorder, prevention of relapse of substance use disorder, or both.

(D) "Substance use disorder" includes misuse, dependence, and addiction to alcohol and/or legal or illegal drugs, as determined by diagnostic criteria in the "Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition" or "DSM-5."

(E) "OARRS" means the "Ohio Automated Rx Reporting System" drug database established and maintained pursuant to section [4729.75](#) of the Revised Code.

(F) For purposes of the rules in Chapter 4731-33 of the Administrative Code:

(1) "Qualified behavioral healthcare provider" means the following who is practicing within the scope of the professional license:

(a) Board certified addictionologist, board certified addiction psychiatrist, or psychiatrist, licensed under Chapter 4731. of the Revised Code;

(b) Licensed independent chemical dependency counselor-clinical supervisor, licensed independent chemical dependency counselor, licensed chemical dependency counselor III, licensed chemical dependency counselor II, or licensed chemical dependency counselor assistant licensed under Chapter 4758. of the Revised Code;

(c) Professional clinical counselor, licensed professional counselor, licensed independent social worker, licensed social worker, or marriage and family therapist, licensed under Chapter 4757. of the Revised Code;

(d) Advanced practice registered nurse, licensed as a clinical nurse specialist under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health clinical nurse specialist issued by the American nurses credentialing center.

(e) Advanced practice registered nurse, licensed as a nurse practitioner under Chapter 4723. of the Revised Code, who holds certification as a psychiatric mental health nurse practitioner issued by the American nurses credentialing center;

- (f) Psychologist, as defined in division (A) of section [4732.01](#) of the Revised Code, licensed under Chapter 4732. of the Revised Code; or
- (g) An advanced practice registered nurse, licensed under Chapter 4723. of the Revised Code, who holds subspecialty certification as a certified addiction registered nurse-advanced practice issued by the addictions nursing certification board.
- (2) Nothing in this paragraph shall be construed to prohibit a physician assistant licensed under Chapter 4730. of the Revised Code who practices under a supervision agreement with a board certified addiction psychiatrist, board certified addictionologist, or psychiatrist who is licensed as a physician under Chapter 4731. of the Revised Code, from providing services within the normal course of practice and expertise of the supervising physician, including addiction services, other mental health services, and physician delegated prescriptive services in compliance with Ohio and federal laws and rules.
- (G) "Community addiction services provider," has the same meaning as in section [5119.01](#) of the Revised Code.
- (H) "Community mental health services provider," has the same meaning as in section [5119.01](#) of the Revised Code.
- (I) "Induction phase," means the phase of opioid treatment during which maintenance medication dosage levels are adjusted until a patient attains stabilization.
- (J) "Stabilization phase," means the medical and psychosocial process of assisting the patient through acute intoxication and withdrawal management to the attainment of a medically stable, fully supported substance-free state, which may include the use of medications.

Effective: 4/30/2019

Five Year Review (FYR) Dates: 04/30/2024

Promulgated Under: [119.03](#)

Statutory Authority: [4731.05](#), [4731.056](#)

Rule Amplifies: [4731.056](#), [4731.83](#)

### **4731-33-03 Office-based treatment for opioid addiction.**

- (A) A physician who provides OBOT shall comply with all of the following requirements:
- (1) Before initiating OBOT, the physician shall comply with section [3719.064](#) of the Revised Code.
  - (2) Comply with all federal and state laws and regulations governing the prescribing of the medication; and
  - (3) Complete at least eight hours of "Category 1" continuing medical education relating to substance abuse and addiction every two years. Courses completed in compliance with this requirement shall be accepted toward meeting the physician's "Category 1" continuing medical education requirement for biennial renewal of the physician's license.
- (B) The physician who provides OBOT shall perform and document an assessment of the patient.
- (1) The assessment shall include all of the following:
    - (a) A comprehensive medical and psychiatric history;
    - (b) A brief mental status exam;
    - (c) Substance abuse history;
    - (d) Family history and psychosocial supports;
    - (e) Appropriate physical examination;

- (f) Urine drug screen or oral fluid drug testing;
- (g) Pregnancy test for women of childbearing age and ability;
- (h) Review of the patient's prescription information in OARRS;
- (i) Testing for human immunodeficiency virus;
- (j) Testing for hepatitis B;
- (k) Testing for hepatitis C; and
- (l) Consideration of screening for tuberculosis and sexually-transmitted diseases in patients with known risk factors.

(2) 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.

(3) If any part of the assessment cannot be completed prior to the initiation of OBOT, the physician shall document the reasons in the medical record.

(C) The physician who provides OBOT shall establish and document a treatment plan that includes all of the following:

- (1) The physician's rationale for selection of the specific drug to be used in the medication-assisted treatment;
- (2) Patient education;
- (3) The patient's written, informed consent;
- (4) Random urine-drug screens;
- (5) A signed treatment agreement that outlines the responsibilities of the patient and the physician; and
- (6) A plan for psychosocial treatment, pursuant to paragraph (E) of this rule.

(D) The physician shall provide OBOT in accordance with an acceptable treatment protocol for assessment, induction, stabilization, maintenance, and tapering. Acceptable protocols are any of the following:

- (1) SAMHSA treatment improvement protocol publications for medication assisted treatment available from the SAMHSA website at: <https://store.samhsa.gov>.
- (2) "National Practice Guideline for the Use of Medications in the Treatment of Addiction Involving Opioid Use," approved by the American society of addiction medicine in 2015, available from the website of the American society of addiction medicine at <https://www.asam.org/>.

(E) Except if the physician providing OBOT is a board certified addictionologist, board certified addiction psychiatrist, or psychiatrist, the physician shall refer and work jointly with a qualified behavioral healthcare provider, community mental health services provider, or community addiction services provider, as those terms are defined in rule 4731-33-01 of the Administrative Code, to determine the optimal type and intensity of psychosocial treatment for the patient and document the treatment plan in the patient record.

- (1) The treatment shall, at a minimum, include a psychosocial needs assessment, supportive counseling, links to existing family supports, and referral to community services.
- (2) The treatment shall include at least one of the following interventions, unless reasons for exception are documented in the patient record:
  - (a) Cognitive behavioral treatment;

- (b) Community reinforcement approach;
- (c) Contingency management/motivational incentives;
- (d) Motivational interviewing; or
- (e) Behavioral couples counseling.

(3) The treatment plan shall include a structure for revision of the treatment plan if the patient does not adhere to the original plan.

(4) When clinically appropriate and if the patient refuses treatment from a qualified behavioral healthcare provider, community mental health services provider, or community addiction services provider, as defined in rule 4731-33-01 of the Administrative Code, the physician shall ensure that the OBOT treatment plan requires the patient to participate in a twelve step program or appropriate self-help recovery program. If the patient is required to participate in a twelve step program or self-help recovery program, the physician shall require the patient to provide documentation of on-going participation in the program.

(5) Additional requirements related to the provider of behavioral health services:

(a) If the physician providing OBOT is a board certified addictionologist, psychiatrist, or board certified psychiatrist, the physician may personally provide behavioral health services for addiction.

(b) If the physician refers the patient to a qualified behavioral healthcare provider, community addiction services provider, or community mental health services provider, the physician shall document the referral and the physician's maintenance of meaningful interactions with the provider in the patient record.

(F) The physician who provides OBOT shall offer the patient a prescription for a naloxone kit.

(1) The physician shall ensure that the patient receives instruction on the kit's use including, but not limited to, recognizing the signs and symptoms of overdose and calling 911 in an overdose situation.

(2) The physician shall offer the patient a new prescription for naloxone upon expiration or use of the old kit.

(3) The physician shall be exempt from this requirement if the patient refuses the prescription. If the patient refuses the prescription the physician shall provide the patient with information on where to obtain a kit without a prescription.

(G) In addition to paragraphs (A) to (F) of this rule, the physician who provides OBOT using buprenorphine products shall comply with all of the following requirements:

(1) The provision shall be in compliance with the United States food and drug administration approved "Risk Evaluation and Mitigation Strategy" for buprenorphine products, which can be found on the United States food and drug administration website at the following address: <https://www.accessdata.fda.gov/scripts/cder/remis/index.cfm>. With the exception of those conditions listed in paragraph (G)(2) of this rule, a physician who treats the opioid use disorder with a buprenorphine product shall only prescribe buprenorphine/naloxone combination products for use in OBOT.

(2) The physician shall prescribe buprenorphine without naloxone (buprenorphine mono-product) only in the following situations, and shall fully document the evidence for the decision to use buprenorphine mono-product in the medical record:

(a) When a patient is pregnant or breast-feeding;

(b) When converting a patient from buprenorphine mono-product to buprenorphine/naloxone combination product;

(c) In formulations other than tablet or film form for indications approved by the United States food and drug administration;

(d) For withdrawal management when a buprenorphine/naloxone combination product is contraindicated, with the contraindication documented in the patient record; or

(e) When the patient has an allergy to or intolerance of a buprenorphine/ naloxone combination product, after explaining to the patient the difference between an allergic reaction and symptoms of opioid withdrawal precipitated by buprenorphine or naloxone, and with documentation included in the patient record.

(3) Due to a higher risk of fatal overdose when buprenorphine is prescribed with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, or tramadol, the physician shall only co-prescribe these substances when it is medically necessary.

(a) The physician shall verify the diagnosis for which the patient is receiving the other drug and coordinate care with the prescriber for the other drug, including whether it is possible to taper the drug to discontinuation. If the physician prescribing buprenorphine is the prescriber of the other drug, the physician shall taper the other drug to discontinuation, if it is safe to do so. The physician shall educate the patient about the serious risks of the combined use.

(b) The physician shall document progress with achieving the tapering plan.

(4) During the induction phase the physician shall not prescribe a dosage that exceeds the recommendaton in the United States food and drug administration approved labeling, except for medically indicated circumstances as documented in the patient record. The physician shall see the patient at least once a week during this phase.

(5) During the stabilization phase, when using any oral formulation of buprenorphine, the physician shall increase the daily dosage of buprenorphine in safe and effective increments to achieve the lowest dose that avoids intoxication, withdrawal, or significant drug craving.

(a) During the first ninety days of treatment, the physician shall prescribe no more than a two-week supply of the buprenorphine product containing naloxone.

(b) Starting with the ninety-first day of treatment and until the completion of twelve months of treatment, the physician shall prescribe no more than a thirty-day supply of the buprenorphine product containing naloxone.

(6) The physician shall take steps to reduce the chances of buprenorphine diversion by using the lowest effective dose, appropriate frequency of office visits, pill counts, and checks of OARRS. The physician shall require urine drug screens, serum medication levels, or oral fluid testing at least twice per quarter for the first year of treatment and at least once per quarter thereafter.

(7) When using any oral formulation of buprenorphine, the physician shall document in the medical record the rationale for prescribed doses exceeding sixteen milligrams of buprenorphine per day. The physician shall not prescribe a dosage exceeding twenty-four milligrams of buprenorphine per day.

(8) The physician shall incorporate relapse prevention strategies into counseling or assure that they are addressed by a qualified behavioral healthcare provider, as defined in rule 4731-33-01 of the Administrative Code, who has the education and experience to provide substance abuse counseling.

(9) The physician may treat a patient using the administration of an extended-release, injectable, or implanted buprenorphine product.

(a) The physician shall strictly comply with any required risk evaluation and mitigation strategy program for the drug.

(b) The physician shall prescribe an extended-release buprenorphine product strictly in accordance with the United States food and drug administration's approved labeling for the drug's use.

(c) The physician shall document in the patient record the rationale for the use of the extended-release buprenorphine product.

(d) The physician who orders or prescribes an extended-release, injectable, or implanted buprenorphine product shall require it to be administered by an Ohio licensed health care professional acting in accordance with the scope of the professional license.

Replaces: 4731-11-12

Effective: 4/30/2019

Five Year Review (FYR) Dates: 04/30/2024

Promulgated Under: [119.03](#)

Statutory Authority: [4731.05](#), [4731.056](#)

Rule Amplifies: [4731.056](#), [4731.83](#)

Prior Effective Dates: 1/31/2015

### **4731-33-04 Medication-assisted treatment using naltrexone.**

(A) In addition to the requirements of paragraphs (A) to (F) of rule 4731-33-03 of the Administrative Code, the physician using naltrexone to treat opioid use disorder shall comply with all of the following requirements:

(1) Prior to treating a patient with naltrexone the physician shall inform the patient about the risk of opioid overdose if the patient ceases naltrexone and then uses opioids. The physician shall take measures to ensure that the patient is adequately detoxified from opioids and is no longer physically dependent prior to treatment with naltrexone.

(2) The physician shall use oral naltrexone only for treatment of patients who can be closely supervised and who are highly motivated.

(a) The dosage regime shall strictly comply with the food and drug administration approved labeling for naltrexone hydrochloride tablets.

(b) The patient shall be encouraged to have a support person administer and supervise the medication. Examples of a support person are a family member, close friend, or employer.

(c) The physician shall require urine drug screens, serum medication levels, or oral fluid drug testing at least every three months for the first year of treatment and at least every six months thereafter.

(d) The physician shall incorporate relapse prevention strategies into counseling or assure that they are addressed by a qualified behavioral healthcare provider, as defined in rule 4731-33-01 of the Administrative Code, who has the education and experience to provide substance abuse counseling.

(B) The physician may treat a patient with extended-release naltrexone for opioid dependence or for co-occurring opioid and alcohol use disorders.

(1) The physician should consider treatment with extended-release naltrexone for patients who have issues with treatment adherence.

(2) The injections dosage shall strictly comply with the United States food and drug administration approved labeling for extended-release naltrexone.

(3) The physician shall incorporate relapse prevention strategies into counseling or assure that they are addressed by a qualified behavioral healthcare provider, as defined in rule 4731-33-01 of the Administrative Code, who has the education and experience to provide substance abuse counseling.

Effective: 4/30/2019

Five Year Review (FYR) Dates: 04/30/2024

Promulgated Under: [119.03](#)

Statutory Authority: [4731.05](#), [4731.056](#)

Rule Amplifies: [4731.056](#), [4731.83](#)



## Terminal Distributor License for Office-Based Opioid Treatment

**Updated 9/3/2019**

[Section 4729.553 of the Ohio Revised Code](#) requires any location where a prescriber is treating more than thirty individuals for opioid dependence or addiction using a controlled substance to obtain a license as a terminal distributor of dangerous drugs with an office-based opioid treatment (OBOT) classification.

**Treatment of opioid dependence or addiction using a controlled substance does not necessarily mean that such medication must be on-site. It can also apply to practices where prescriptions for controlled substances are issued for opioid addiction/dependence and the patient receives medication from a pharmacy.**

Be advised that the following entities are exempt from licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment (OBOT) classification:

1. Hospitals registered with the Ohio Department of Health under section 3701.07 of the Revised Code.
2. Facilities for the treatment of opioid dependence or addiction that are operated by a hospital.
3. Physician practices owned or controlled, in whole or in part, by a hospital or an entity that owns or controls, in whole or in part, one or more hospitals.
4. Facilities that only conduct clinical research and use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board that is accredited by the Association for the Accreditation of Human Research Protections Programs, Inc.
5. Facilities that hold a category III terminal distributor of dangerous drugs license for the purpose of treating drug dependence or addiction as part of an opioid treatment program and are already subject to certification by the U.S. Substance and Mental Health Services Administration (SAMHSA).
6. A program or facility that holds a license or certification issued by the Ohio Department of Mental Health and Addiction Services under Chapter 5119. of the Revised Code if the license or certification is approved by the State Board of Pharmacy. **On 3/4/2019, the Board approved General Services Certification issued by the Ohio Department of Mental Health and Addiction Services (R-2019-173).**
7. A federally qualified health center or federally qualified health center look-alike, as defined in [section 3701.047 of the Revised Code](#).
8. A state or local correctional facility, as defined in [section 5163.45 of the Revised Code](#).

To apply for a license, visit: <https://elicense.ohio.gov>. Supplemental application forms and eLicense

77 South High Street, 17th Floor, Columbus, Ohio 43215



guides can be accessed here: <https://www.pharmacy.ohio.gov/Licensing/TDDD.aspx>

**IMPORTANT:** Unless exempted, any facility treating more than thirty individuals with controlled substances for opioid dependence or addiction without being properly licensed will be in violation of Ohio law. Penalties for failure to obtain proper licensure include monetary fines of up to \$5,000.

### **Physician Ownership Requirement and Waivers**

The law requires an OBOT facility be owned and operated solely by one or more physicians authorized by the State Medical Board to practice medicine or osteopathic medicine. However, the law provides that the Board has the authority to waive this requirement. The waiver form is available for download under the FORMS section of the terminal distributor licensing page:

<https://www.pharmacy.ohio.gov/Licensing/TDDD.aspx>

### **Criminal Records Checks**

The law also requires any person with ownership of the facility to submit to a criminal records check and send the result directly to the Pharmacy Board for review.

Additionally, the law requires all employees of the facility to submit to a criminal records check to ensure that a person is not employed by the facility if the person, within the ten years immediately preceding the date the person applied for employment, was convicted of, or pleaded guilty to, either of the following:

- A theft offense, described in division (K)(3) of section 2913.01 of the Revised Code, that would constitute a felony under the laws of this state, any other state, or the United States; or
- A felony drug offense, as defined in section 2925.01 of the Revised Code.

**Note:** A licensee or applicant may apply for a waiver for an employee who has previously been convicted of or pleaded guilty to any felony theft or drug offense within the ten years immediately preceding the date the person applied for employment.

Waivers will be granted on a case-by-case basis as determined by the Board. The waiver form is available for download under the FORMS section of the terminal distributor licensing page:

<https://www.pharmacy.ohio.gov/Licensing/TDDD.aspx>

### **What if I already have a terminal distributor license?**

You will need to apply for a license as a terminal distributor of dangerous drugs with an office-based opioid treatment classification. The office-based opioid treatment license will take the place of your existing terminal distributor license.

### **I work in a multi-physician practice where each physician provides office-based opioid treatment to 30 or fewer patients. Is my practice required to obtain licensure?**

No. The law requires licensure for any location where *a prescriber* is treating more than thirty individuals for opioid dependence or addiction using a controlled substance.

If a prescriber has multiple practice locations and treats more than 30 patients at each location, then each location will need its own terminal distributor license.

**Will patients prescribed buprenorphine for chronic pain be included in each prescriber's patient count?**

No. Patients treated for chronic pain using controlled substances will not be counted towards a prescriber's patient count and will not be used to determine if licensure is required.

**For More Information**

OBOT rules (OAC 4729-18) can be accessed here: <http://codes.ohio.gov/oac/4729-18>

If you need additional information, the most expedient way to have your questions answered will be to e-mail the Board office by visiting: <http://www.pharmacy.ohio.gov/contact.aspx>.

For a summary of SB 319, please visit:

<https://www.legislature.ohio.gov/download?key=6079&format=pdf>



---

**MEMORANDUM**

TO: Robert P. Giacalone, Acting Chair, Policy Committee  
Members, Policy Committee

FROM: Kimberly C. Anderson, Chief Legal Counsel

RE: CRNA-Nurse Anesthesiologist Terminology

DATE: December 31, 2019

---

Questions have arisen regarding the use of the term “anesthesiologist” by Certified Registered Nurse Anesthetists (“CRNA”). HB 224 addresses CRNA practice and is pending in the House Health Committee.

Nothing in HB 224 addresses using the title nurse anesthesiologist and refers to a “nurse authorized to practice as a certified registered nurse anesthetist” throughout the current version of the bill. The American Association of Nurse Anesthetists has taken action to recognize an optional title of “nurse anesthesiologist”. Boards of Nursing in three states (NH, FL, ID) have recognized this optional title.

The AMA has issued a brief on this issue indicating that allowing nurse anesthetists to refer to themselves as “nurse anesthesiologists” is both misleading and confusing and does not further the mission of protecting the health, safety and public welfare of the citizens of a state. See attached copy.

The New Hampshire Board of Medicine issued a position statement indicating that anesthesiologist cannot be used to refer to a nurse. Florida has a pending bill which would make the use of certain types of physician specialties grounds for discipline. See attached copies.

Section 4731.34, ORC states that It is the unauthorized practice of medicine to use the words, doctor, physician or any other title in connection with the person’s name in any way that represents the person as engaged in the practice of medicine and surgery, osteopathic medicine and surgery or podiatric medicine and surgery in any of its branches. The statute does not directly address whether the use of the word “anesthesiologist” is a title that represents the practice of medicine.

Board staff has reached out to the Ohio Board of Nursing on this issue.

At this time, three options are available to the Board:

1. Continue to work with the Ohio Board of Nursing and gather information to determine the scope of this issue in Ohio;
  2. Pursue legislation similar to that in Florida; or
-

3. Adopt a position statement similar to the AMA position statement.

**Requested Action: Determine which course of action is appropriate at this time.**

## Issue brief: Nurse Anesthetist title change

### Introduction

State boards of nursing have taken steps to allow nurse anesthetists to use the term “nurse anesthesiologists” as an optional descriptor or official title. This is often pursued by the board outside of the regulatory process that would allow public comment. The use of the term “nurse anesthesiologist” has been percolating at the national level for several years. In 2018, the American Association of Nurse Anesthetists (AANA) Board of Trustees adopted an official position statement (Statement) clarifying that the term “nurse anesthesiologists” may be used as an optional descriptor. In fact, in 2019 AANA went one step farther revising the same position statement by adding “certified registered nurse anesthesiologist” and “nurse anesthesiologist” to the list of acceptable titles, stating “AANA recognizes the following titles to identify nurse anesthetists: ‘certified registered nurse anesthetist,’ ‘certified registered nurse anesthesiologist,’ ‘CRNA,’ ‘nurse anesthetist,’ and ‘nurse anesthesiologist.’” The position statement also urges healthcare policymakers, insurers, organizations, employers, healthcare professionals and others to use these titles.

Since this Statement, boards of nursing in three states (Florida, Idaho and New Hampshire) have addressed this issue. In all instances the board of nursing has acted outside any regulatory process that would allow public comment. Below is a summary of the action taken in each of these states. Please note all activity is currently in flux.

For up-to-date information, please contact Kim Horvath, Senior Legislative Attorney, AMA Advocacy Resource Center, at [kimberly.horvath@ama-assn.org](mailto:kimberly.horvath@ama-assn.org).

### New Hampshire

In March 2019 the New Hampshire Board of Nursing (NHBON) issued a “*Position Statement regarding the use of Nurse Anesthesiologist as a communication tool and optional descriptor for Certified Registered Nurse Anesthetists (CRNAs)*” (Position Statement). The Position Statement allows nurse anesthetists to use the term “nurse anesthesiologist” and “certified registered nurse anesthesiologist” as optional descriptors. The Statement specifies that this does not amount to a title change and does not expand nurse anesthetist scope of practice. Yet, it is notable that the most recent licensing application for advance practices nurses (APRNs) in New Hampshire includes “nurse anesthesiologist” as a licensing option.

In response to the NHBON Position Statement, the New Hampshire Board of Medicine (NHBOM) sent a memorandum to the NHBON expressing their serious concerns with use of the term “nurse anesthesiologist” by nurse anesthetists, indicating it is misleading and confusing for the public. The memorandum also indicated CRNAs using this term could be fined up to \$50,000 for advertising themselves, to the public, as a physician. Many medical associations also sent letters expressing concern with the NHBON decision, including the New Hampshire Medical Society (NHMS), American Medical Association, American Society of Anesthesiologist, American College of Physicians, New Hampshire Society of Eye Physicians and Surgeons, New Hampshire Osteopathic Association, New Hampshire Psychiatric Society, New Hampshire American College of Emergency Physicians, New Hampshire Academy of Family Physicians, New Hampshire Orthopaedic Society, New Hampshire Chapter of the American Academy of Pediatrics, New Hampshire Radiology Society and New Hampshire Society of Pathologist.

In November 2019, the NHBOM issued a ruling finding that anyone who uses the term “anesthesiologist” must be licensed by the Board of Medicine. The NHBOM’s unanimous decision was in response to a petition for declaratory ruling filed by the NHMS and New Hampshire Society of Anesthesiologist. In its ruling, the NHBOM specifically determined, “anyone in New Hampshire who identifies themselves as a nurse anesthesiologist or otherwise describes themselves using the term anesthesiologist in their professional title without a license from the Board of Medicine is holding oneself out as qualified to practice medicine when not qualified or licensed to do so, in violation of RSA 329:24” (refers to the unlawful practice of medicine statute).

## Florida

In September 2019, the Florida Board of Nursing (FLBON) issued a “*Petition for Declaratory Statement*” in which the FLBON allowed a single CRNA (Petitioner) to use the term “nurse anesthesiologist” as a descriptor for himself and his job duties. Specifically, the Petitioner sought the FLBON’s opinion on whether the FLBON would discipline the individual if he were to refer to himself as a “nurse anesthesiologist.” The Florida Medical Association, Florida Society of Anesthesiologists and Florida Osteopathic Medical Association (Intervenors) filed a Motion to Intervene with the FLBON. Subsequently, the FLBON denied the motion based on the parties’ lack of standing. The FLBON determined the Intervenors failed to show that any confusion caused by allowing this individual to use the term “nurse anesthesiologist” would cause an actual and immediate injury to a patient of the physicians, arguing any injury is speculative and hypothetical. The FLBON also opined that the term “anesthesiologist” is not a protected term in the Florida Medical Practice Act to be used exclusively by physicians licensed by the Medical or Osteopathic Boards. The FLBON, therefore, concluded that the Board of Medicine and Board of Osteopathic Medicine do not have the authority to discipline a licensee licensed by the FLBON for using this term.

## Idaho

In October 2019, the Idaho Board of Nursing (IDBON) approved the drafting of a position statement allowing nurse anesthetist to use the title “nurse anesthesiologist.” This position statement will be considered at their January 2020 meeting. The IDBON will also draft a rule change for consideration at their January 2020 meeting. If approved, the draft rule change will be presented to the state legislature for passage.

## AMA position and Truth in Advertising laws

Occupational licensing boards, including state boards of nursing and boards of medicine share a common mission: to protect the health, safety and welfare of the public. The American Medical Association (AMA) believes allowing nurse anesthetists to refer to themselves as “nurse anesthesiologists” is both misleading and confusing and does not further the mission of protecting the health, safety and public welfare of the citizens of a specific state.

Today, more than ever, patients are expected to play a greater role in their health care decision-making. Yet, patients are often confused about who is providing their health care. Patients, however, clearly understand the difference between an anesthesiologist and nurse anesthetists. Based on the AMA’s recent study, 70 percent of patients recognized an “anesthesiologist” as a physician and a 71 percent responded that a “nurse anesthetist” was not a physician. The AMA believes this provides strong evidence that patients, today, understand the difference between these two professions. Allowing nurse anesthetists to now use the term “nurse anesthesiologist” muddies the waters and will serve to further confuse patients. At the very least, it does nothing to clarify the distinction between the professions for the remaining 29-30% of the public that do not recognize the difference.

With the proliferation of health professionals with varying levels of education and training, the AMA believes it is more important than ever for the titles used by members of the health care team to be easily recognizable by patients. This is the cornerstone of the AMA's Truth in Advertising Campaign which seeks to improve transparency in health care, requiring all members of the health care team to accurately disclose their training and qualifications. Allowing nurse anesthetists to use the title "nurse anesthesiologist" is an inaccurate and misleading representation that puts the health and safety of patients at risk.

November 2019

1                   A bill to be entitled  
 2           An act relating to prohibited acts by health care  
 3           practitioners; amending s. 456.072, F.S.; authorizing  
 4           disciplinary action to be enforced by the Department  
 5           of Health for the use of specified names or titles  
 6           without a valid license or certification to practice  
 7           as such; providing a definition; providing an  
 8           effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1. Paragraph (pp) is added to subsection (1) of  
 13           section 456.072, Florida Statutes, to read:

14           456.072 Grounds for discipline; penalties; enforcement.—

15           (1) The following acts shall constitute grounds for which  
 16           the disciplinary actions specified in subsection (2) may be  
 17           taken:

18           (pp)1. Knowingly using the name or title "physician,"  
 19           "surgeon," "medical doctor," "doctor of osteopathy," "M.D.,"  
 20           "anesthesiologist," "cardiologist," "dermatologist,"  
 21           "endocrinologist," "gastroenterologist," "general practitioner,"  
 22           "gynecologist," "hematologist," "hospitalist," "internist,"  
 23           "interventional pain medicine physician," "laryngologist,"  
 24           "nephrologist," "neurologist," "obstetrician," "oncologist,"  
 25           "ophthalmologist," "orthopedic surgeon," "orthopedist,"

26 "osteopath," "otologist," "otolaryngologist,"  
27 "otorhinolaryngologist," "pathologist," "pediatrician,"  
28 "podiatrist," "primary care physician," "proctologist,"  
29 "psychiatrist," "radiologist," "rheumatologist," "rhinologist,"  
30 or "urologist," or any other words, letters, abbreviations, or  
31 insignia indicating or implying that he or she is authorized by  
32 chapter 458, chapter 459, or chapter 461 to practice as such. If  
33 the department finds any person guilty of the grounds set forth  
34 in this paragraph, it may enter an order imposing one or more of  
35 the penalties provided in subsection (2).

36 2. For purposes of this paragraph, "anesthesiologist" has  
37 the same meaning as provided in s. 458.3475 or s. 459.023.

38 Section 2. This act shall take effect upon becoming a law.



# New Hampshire MEDICAL SOCIETY

[HOME](#)   [MEMBERSHIP](#)   [POLICY & ADVOCACY](#)   [RESOURCES](#)   [EDUCATION/CME](#)   [NEWS](#)

[SPECIALTY SOCIETIES](#)   [ABOUT NHMS](#)

[Home](#)

## New Hampshire Board of Medicine Issues Decision on Petition for Declaratory Ruling

*November 14, 2019*

### **New Hampshire Board of Medicine Issues Decision on Petition for Declaratory Ruling**

#### **Prohibiting use of optional descriptor unanimously approved.**

The New Hampshire Board of Medicine (BOM) voted unanimously at their November meeting to prohibit individuals from using optional descriptors to identify themselves as anesthesiologists without licensure. The action comes in response to a position statement approved in November 2018 by the New Hampshire Board of Nursing allowing Certified Registered Nurse Anesthetists (CRNAs) to refer to themselves as “nurse anesthesiologists.”

“We are pleased by the New Hampshire Board of Medicine’s decision to support the use of “anesthesiologist” solely for practitioners licensed by the Board who are engaged in the authorized practice of medicine,” said James Potter, Executive Vice President of the New Hampshire Medical Society. “This ruling is consistent with the Board of Medicine’s mission to protect members of New Hampshire’s public.”

---

[About](#) | [CME](#) | [Contact](#) | [Join](#) | [Remote Access](#)

New Hampshire Medical Society  
7 North State Street, Concord, NH 03301-4018  
(603) 224-1909 or NH Toll Free (800) 564-1909

Copyright © 2016 New Hampshire Medical Society. All Rights Reserved.