



Rule 4731-11-09 – Frequently Asked Questions

Medical Board Rule 4731-11-09 describes the circumstances under which a physician or physician assistant can prescribe medication to a patient whom the physician or physician assistant has never personally examined when the patient is at a different location from the prescriber. Although most frequently referred to as the “telemedicine prescribing” rule, 4731-11-09 applies in all situations where the physician or physician assistant is in one location and the patient is in another and the physician or physician assistant has never personally examined the patient.

1. Question 1: Why does this FAQ include physician assistants in the questions and answers when the language of the rule only states “physician?”

The rule is applicable to physician assistants because Rule 4730-1-06, Ohio Administrative Code, states that all rules in Chapter 4731-11 of the Ohio Administrative Code are applicable to physician assistants. In addition, Section 4730.42, Ohio Revised Code, provides that a supervising physician shall not grant physician-delegated prescriptive authority to a physician assistant in a manner that exceeds the supervising physician's prescriptive authority.

2. Question 2: What is meant by the term “healthcare provider?”

A “healthcare provider” is a licensed individual acting within the scope of their professional license. The term includes advanced practice nurses and physician assistants who hold prescriptive authority.

3. When the patient is remote from the physician or physician assistant, does an “evaluation” require the use of devices that allow there to be a visual connection with the patient?

Rule 4731-11-09 is silent as to the requirements for the equipment.

However, for prescribing a controlled substance in compliance with Paragraph (D) of the rule, federal law requires that telemedicine practice occur via use of a telecommunication system that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system. However, asynchronous store and forward technologies may be used for photographs specific to the patient's medical condition when adequate for furnishing or confirming a diagnosis and treatment plan. 42 CFR 410.78(a).

4. Is there a difference between prescribing controlled medications versus non-controlled medications to a patient under Rule 4731-11-09?

Yes, controlled substance (or Drug Enforcement Administration [DEA] scheduled) medications can only be prescribed via the procedures outlined in Rule 4731-11-09(D). Non-controlled medications can only be prescribed by following the procedures in Rule 4731-11-09(C).

5. Are there any situations in which the physician or physician assistant can prescribe a controlled substance medication to a patient who is not in the same location as the physician or physician assistant, even though the physician or physician assistant has never conducted a physical examination of the patient?

Yes, paragraph (D) of the rule lists the situations in federal law that authorize an Ohio prescriber to prescribe a controlled substance to a patient whom they have not personally examined and who is at a different location than the prescriber, as follows:

- When providing on-call or cross coverage for a physician or other appropriately licensed healthcare practitioner who has the patient as an active patient and all of the requirements of 4731-11-09(C) for non-controlled medication prescriptions are met. The on-call or cross coverage must be per an agreement between the on-call/cross covering physician and the healthcare provider.
- The patient is in a hospital or clinic that is registered with the DEA and the patient is being treated by a healthcare provider who has a DEA certificate of registration.
- The patient is in the physical presence of a health care provider who has a DEA certificate of registration and the patient is being treated by that healthcare provider.
- The physician or physician assistant has obtained from the DEA administrator a special DEA certificate of registration. (NOTE: At this time the special DEA certificate of registration is not available although it may be in the future.)

6. Does Rule 4731-11-09 recognize the unique prescribing needs presented by patients enrolled in state licensed hospice programs?

Yes, Rule 4731-11-09(D)(5) authorizes the medical director, hospice physician, or attending physician for a licensed hospice program to prescribe a controlled substance to a remote patient whom they have not personally examined, when all of the following are met:

- The controlled substance medication is being provided to a patient enrolled in the hospice program
- and**
- The prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

7. Does Rule 4731-11-09 recognize the unique prescribing needs of patients in institutional settings?

Yes, Rule 4731-11-09 authorizes a medical director or attending physician at an institutional facility as defined by Pharmacy Board Rule 4729-17-01 (see <http://codes.ohio.gov/oac/4729-17-01>), to prescribe a controlled substance to a patient who is remote from the physician and whom the physician has never conducted a physical examination when the following conditions are met:

- The controlled substance medication is being provided to a person who has been

admitted as an inpatient or is a resident of that institutional facility

and

- The prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

8. What types of facilities are included in the definition of “institutional facility?”

As defined in Pharmacy Board rule, an “institutional facility” means a hospital as defined in Section 3727.01 of the Ohio Revised Code, or a facility licensed by the Ohio State Board of Pharmacy and the Ohio Department of Health, Ohio Department of Rehabilitation and Correction, Ohio Department of Development Disabilities, or the Ohio Department of Mental Health and Addiction Services at which medical care is provided on site and a medical record documenting episodes of care, including medications ordered and administered, is maintained.

The following facilities are examples of institutional facilities:

- Hospitals registered with the Ohio Department of Health
- Convalescent homes
- Developmental facilities
- Long term care facilities
- Nursing homes
- Psychiatric facilities
- Rehabilitation facilities
- Developmental disability facilities
- Level III sub-acute detoxification facilities

9. I am a gastroenterologist and routinely prescribe non-controlled laxatives to patients prior to providing screening colonoscopies. Am I required to interact with the patient prior to prescribing these non-controlled substances?

If the patient has been referred for a screening colonoscopy by a healthcare provider who has prescriptive authority, the information contained in the referral, including patient history and physical examination notes, are sufficient for the gastroenterologist to rely upon in prescribing the non-controlled substances for preparation for the colonoscopy. The evaluation by the referring healthcare provider with prescriptive authority would meet the requirements of 4731-11-09(C)(4).

10. I am a psychiatrist. Am I able to prescribe Schedule II controlled substance stimulants such as Vyvance or Adderall to a patient who is remote when I have never conducted an in-person examination of the patient?

In general, no. However, if the prescribing situation meets one of the exceptions listed in Paragraph (D) of the rule then the answer is yes. But see the answer to #3, above, for important information concerning the requirements for the telecommunications system when prescribing a controlled substance via the practice of telemedicine.

11. I am a psychiatrist. Am I able to prescribe Schedule II controlled substance stimulants such as Vyvance or Adderall to a patient in a cross-coverage arrangement with an advanced practice nurse who can only prescribe Schedule II medications for a seventy-

two hour period?

It depends. “Cross-coverage” under Rule 4731-11-09 and federal law is defined as a practitioner who conducts a medical evaluation at the request of another practitioner who conducted a medical evaluation of the patient within the previous twenty-four months and is temporarily unavailable to conduct a current evaluation. Under a September 2018 interpretation by the U.S. Department of Health and Human Services, the remote psychiatrist would be able to rely upon the examination conducted by the advanced practice registered nurse who is registered with the DEA, when the patient is in the presence of the advanced practice registered nurse and the physician communicates with the patient via an appropriately safeguarded interactive telecommunication system to determine whether the prescription is appropriate. See the answer to #3, above, for important information concerning the requirements for the telecommunication system.

12. I am a physician who has a collaboration agreement with an advanced practice registered nurse or a supervision agreement with a physician assistant. Can I rely solely on the assessment conducted by the advanced practice registered nurse or physician assistant for the evaluation aspect before prescribing a controlled substance to the patient?

No, not solely on the assessment of the advanced practice registered nurse or physician assistant. Federal law recognizes that some of the evaluation may be conducted by the advanced practice registered nurse or physician assistant who holds DEA registration, however, federal law still requires that the collaborating or supervising physician must communicate with the patient, who is in the presence of the advanced practice registered nurse or physician assistant, via an appropriately safeguarded interactive telecommunication system to determine whether the prescription is appropriate. See the answer to #3, above, for important information concerning the requirements for the telecommunication systems.

13. In a cross-coverage or on-call situation, I am considering prescribing a non-controlled substance to a patient who I have never physically examined. Can I rely on a nurse’s assessment of the patient to comply with 4731-11-09(C)(4)?

Yes, in a cross-coverage situation the interaction with the patient required by Paragraph (C)(4) of the rule may be coordinated through another licensed health care provider acting within the scope of their professional license. Examples of licensed healthcare providers include a nurse, pharmacist, or physician assistant. “Cross-coverage” is defined in Rule 4731-11-01 to include “on call coverage.”

14. Before prescribing a non-controlled substance to a new patient via a telemedicine encounter, am I required to personally perform all of the steps in 4731-11-09 (C)(1) through (C)(9)?

The physician or physician assistant must interact with the patient to complete a medical evaluation, as required by 4731-11-09(C)(4), and to establish or confirm a diagnosis and treatment plan, to include the utilization of any prescription drug, as required by 4731-11-09(C)(5). However, all documentation and other requirements may be delegated to appropriate personnel.

15. I am in a cross-coverage arrangement with another health care provider and I am covering for that healthcare provider who is on vacation. What do I need to do if I am considering prescribing a controlled substance medication to a patient of the vacationing healthcare provider?

The prescribing of controlled substances must comply with 4731-11-09(D):

- Under (D)(1), you must comply with the requirements of paragraph (C) of the rule. See Questions 15 and 16 for information concerning compliance with paragraph (C) requirements.
- Under (D)(2) – (6), you must have sufficient information to prescribe within the minimal standards of care.

16. I am in a cross-coverage arrangement as described above. What do I need to do if I am considering prescribing a non-controlled substance medication to the same patient?

You must comply with the requirements of 4731-11-09(C) regardless of whether or not the patient is in an in-patient setting. However, the interaction with the patient required by Paragraph (C)(4) may be coordinated through another licensed healthcare professional working within the scope of their professional license.

17. I am a hospice medical director. May I prescribe a controlled substance medication to a hospice patient I have never personally examined?

Yes, 4731-11-09(D)(5) permits you to do so when you comply with the requirements of that paragraph.

18. I am the medical director of a hospice. May I prescribe a non-controlled substance medication to a hospice patient I have never personally examined?

Yes, but you must follow all of the requirements in 4731-11-09(C). However, the interaction with the patient required by Paragraph (C)(4) of the rule may be coordinated through another licensed health care provider acting within the scope of their professional license.

19. I am an attending physician of a hospice program. I am considering prescribing a non-controlled substance to a hospice patient whom I have never examined. Do I need to follow all of the requirements in 4731-11-09(C) if the patient is in a home care setting?

Yes. However, the interaction with the patient required by Paragraph (C)(4) of the rule may be coordinated through another licensed health care provider acting within the scope of their professional license.

20. What if the patient is in an in-patient setting? Do I still have to follow all of the requirements in 4731-11-09(C) in a cross-coverage situation?

Yes. However, the interaction with the patient required by Paragraph (C)(4) of the rule may be coordinated through another licensed health care provider acting within the scope of their professional license.

21. I am the physician for a home health program. I am the collaborating physician for advanced practice registered nurses and supervising physician for physician assistants who make the home visits. Many of the patients require Schedule II controlled

substances, however, the situation is not one in which the advanced practice registered nurse or physician assistant is authorized by the Ohio Revised Code to prescribe a Schedule II drug. Even though I have never personally examined the patient, may I prescribe a Schedule II medication to the patient based upon the physical examinations and assessments performed by the advanced practice registered nurse or physician assistant?

See the answers to #11 and #12, above.

22. The medical license of a physician who practices as a sole practitioner was suspended by the Medical Board. Some of the physician's patients have called my office seeking new prescriptions for the controlled substances that had been prescribed to them by the now suspended physician. It will be several days before the patients will be able to be seen by me. Does it constitute cross-coverage or on-call when the previous prescribing physician is not available due to license suspension or revocation?

The suspension of a physician's medical license does not create a cross-coverage or on-call situation with a subsequent physician for the purpose of prescribing controlled substances. Cross-coverage" under Rule 4731-11-09 and federal law is defined as a practitioner who conducts a medical evaluation at the request of another practitioner who conducted a medical evaluation of the patient within the previous twenty-four months and is temporarily unavailable to conduct a current evaluation. While the suspended physician is certainly "unavailable," patient safety requires that the subsequent physician establish a physician-patient relationship with the patient by conducting an in-person examination of the patient to determine appropriate medical care before prescribing a controlled substance.

23. In a cross-covering situation is the cross-covering physician or physician assistant required to have interaction with the patient who seeks a new prescription for a maintenance drug that is not a controlled substance?

Perhaps. The cross-covering physician or physician assistant does not need to personally interact with the patient if all of the following conditions are met:

1. It is a cross-coverage situation as defined in Rule 4731-11-01, Ohio Administrative Code. That is, the care is being delivered by agreement between an Ohio-licensed physician or physician assistant and another Ohio licensed physician or healthcare provider who is temporarily unavailable to conduct an evaluation of the patient.
2. The patient is an active patient of the other physician or healthcare provider. An active patient is one that within the previous twenty-four months the physician or other healthcare provider being cross-covered conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine.
3. The drug requested is a non-controlled maintenance drug for a chronic condition.
4. The cross-covering physician or physician assistant has access to the patient's medical record and reviews the record as part of the prescriptive decision-making.
5. The cross-covering physician or physician assistant authorizes the issuance of a new prescription.