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## STATE MEDICAL BOARD

### **Practitioner impairment monitoring**

- Revises the law governing the State Medical Board's confidential program for treating and monitoring impaired practitioners, including by extending the program to practitioners unable to practice because of mental or physical illness, rather than only those impaired by drugs, alcohol, or other substances as under prior law.

### **Medical Board license holders – retired status**

- Establishes a process by which practitioners licensed by the Medical Board who meet certain eligibility conditions may have their licenses placed on retired status.
- Prohibits the holder of a license placed on retired status from practicing under the license, but permits the holder to continue to use any title authorized for the license so long as the title also indicates that the practitioner is retired.
- Establishes a process by which a license placed on retired status may be reactivated by the Board.
- Authorizes the Board to take the same disciplinary action against retired status license holders and applicants as it may take against any other license holders or applicants.

### **Criminal records checks under Interstate Medical Licensure Compact**

- Clarifies that applicants under the Interstate Medical Licensure Compact are required to comply with Ohio's procedure for criminal records checks for physicians.

### **Sonographer use of intravenous ultrasound enhancing agents**

- Authorizes a sonographer to administer intravenously ultrasound enhancing agents under physician delegation if certain conditions are met.

### **Physician assistant prescribing for outpatient behavioral health**

- Authorizes a physician assistant (PA) to prescribe a schedule II controlled substance at an outpatient behavioral health practice, but only if the PA has entered into a supervisory agreement with a physician employed by the same practice.

### **Practice of acupuncture and herbal therapy**

- Authorizes a licensed acupuncturist with a national certification in Chinese herbology or oriental medicine to practice herbal therapy.
- Eliminates supervisory requirements for newly licensed acupuncturists, including duties and reimbursement allowances for supervising physicians and chiropractors.

## **Subpoenas for patient record information**

- Eliminates requirements that the supervising member of the Medical Board approve the issuance of subpoenas for patient record information and be involved in probable cause determinations related to such subpoenas.

## **Time limit to issue adjudicative order**

- Increases the time the Medical Board has to issue a final adjudicative order related to the summary suspension of a physician assistant's license to 75 days (from 60).

## **Public address information for licensees**

- Eliminates a requirement that the Medical Board's public directory of licensees include a licensee's contact information, and instead requires it to include the licensee's business address.

## **Legacy Pain Management Study Committee**

- Establishes the Legacy Pain Management Study Committee to study and evaluate the care and treatment of patients experiencing chronic or debilitating pain, in particular those who have been prescribed opioids for lengthy periods of time, often referred to as legacy patients.
- Requires the committee, by December 1, 2024, to prepare and submit to the General Assembly a report of its recommendations for legislation addressing the care and treatment of legacy patients.

## **Practitioner impairment monitoring**

(R.C. 3701.89, 4730.25, 4730.32, 4731.22, 4731.224, repealed and new 4731.25, repealed and new 4731.251, 4731.252, 4731.253, 4731.254, 4731.255, 4759.07, 4759.13, 4760.13, 4760.16, 4761.09, 4761.19, 4762.13, 4762.16, 4774.13, 4774.16, 4778.14, and 4778.17)

The act revises the law governing the State Medical Board's confidential program for evaluating, treating, and monitoring practitioner and applicant impairment because of drugs, alcohol, and other substances.

Under continuing law, the Medical Board is responsible for licensing and regulating the following practitioners: physicians, physician assistants, limited branch of medicine practitioners, dietitians, respiratory care professionals, anesthesiologist assistants, acupuncturists, radiologist assistants, and genetic counselors. The Board's regulation may include imposing disciplinary sanctions, including for drug, alcohol, and substance use impairment and for the inability to practice due to mental or physical illness.

### **Program name**

The act names the program the Confidential Monitoring Program, replacing the name One-Bite. The act also describes the program as nondisciplinary.

## **Mental or physical illness**

While the former One-Bite Program applied only to practitioners and applicants whose ability to practice was impaired because of habitual or excessive use or abuse of drugs, alcohol, or other substances, the act expands the meaning of impairment to include the inability to practice by reason of mental or physical illness. The act also eliminates prior law references to habitual use of drugs, alcohol, or other substances.

## **Potential impairment**

The act specifically allows practitioners and applicants who may be impaired to participate in the Confidential Monitoring Program. Under prior law, the practitioner or applicant was required to be impaired in order to be eligible to participate.

## **Monitoring organization**

The act maintains the requirement that the Medical Board contract with a monitoring organization to conduct the program and perform monitoring services. But, it requires the monitoring organization, as a condition of eligibility to conduct the program, to be a “professionals health program” sponsored by a professional association or society of practitioners.

The act also requires the monitoring organization to employ any licensed health care practitioners necessary for the program’s operation, in place of the prior law requirement to employ chemical dependency counselors, social workers, clinical counselors, and psychologists.

## **Practitioner eligibility**

The act modifies a condition of practitioner eligibility related to prior professional discipline, by instead prohibiting a practitioner from participating if still under the terms of a consent agreement or Board order.

## **Practice suspension**

The act eliminates the requirement that a practitioner suspend practice while participating in the program. It instead requires suspension only if the monitoring organization, evaluator, or treatment provider recommends it.

## **Practitioner relapse**

Continuing law prohibits the monitoring organization from disclosing to the Medical Board the name of a participating practitioner or applicant, except in certain circumstances. The act eliminates the circumstance in which a practitioner or applicant relapses.

## **Approval of evaluators and treatment providers**

The act transfers from the Medical Board to the monitoring organization the responsibility for approving treatment providers. The act also requires the organization to approve program evaluators. However, the Board and organization together must develop criteria and procedures for evaluator and treatment provider approval. The Board also must adopt rules establishing standards for approval.

## **Note on treatment providers**

The monitoring organization's approval of treatment providers under the act is not limited to those serving the Confidential Monitoring Program. The act also extends the organization's approval to those providing services as part of the Medical Board's formal disciplinary processes.

## **Assistance with formal disciplinary action**

Separate from the Confidential Monitoring Program, the Medical Board may contract with the monitoring organization to assist in the monitoring of impaired practitioners who are subject to formal disciplinary action by the Board.

## **Medical Board license holders – retired status**

(R.C. 4730.14, 4730.141, 4730.25, 4730.28, 4731.22, 4731.222, 4731.282, 4731.283, 4759.06, 4759.063, 4759.064, 4759.07, 4760.061, 4760.062, 4760.13, 4761.06, 4761.061, 4761.062, 4761.09, 4762.061, 4762.062, 4762.13, 4774.061, 4774.062, 4774.13, 4778.06, 4778.071, 4778.072, and 4778.14)

The act establishes a process by which the following practitioners licensed by the Medical Board may have their licenses placed on retired status: physicians, massage therapists, physician assistants, dietitians, anesthesiologist assistants, respiratory therapists, acupuncturists, radiologist assistants, and genetic counselors.

An individual seeking retired status must file an application with the Board in the form and manner the Board prescribes. The application must be submitted before the end of a license renewal period.

## **Eligibility conditions**

The act requires the Medical Board to place a license on retired status if the applicant meets the following eligibility conditions and pays the application fee:<sup>121</sup>

- The applicant holds a current, valid license to practice;
- The applicant has retired voluntarily from practice;
- In the case of a physician or physician assistant applicant, the applicant does not hold an active registration with the federal Drug Enforcement Administration;
- The applicant does not have any criminal charges pending;
- The applicant is not the subject of discipline by, or an investigation pending with, a regulatory agency of Ohio, another state, or the U.S.;
- The applicant does not have any complaints pending with the Medical Board;

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<sup>121</sup> Fee amounts differ depending on the type of practitioner. For example, a physician must pay \$500, while an acupuncturist pays \$150.

- At the time of application, the applicant is not subject to the Board's hearing, disciplinary, or compliance processes under the terms of a citation, notice of opportunity for hearing, Board order, or consent agreement.

### **Retired status duration**

Once a license is placed on retired status, it remains on retired status for the life of the holder, unless suspended, revoked, or reactivated. While on retired status, the license does not require renewal.

### **Limitations while on retired status**

While a license is on retired status, all of the following apply to the license holder:

- The holder is prohibited from practicing under any circumstance;
- The holder is not required to complete continuing education to maintain the license;
- The holder is prohibited from using the license to obtain a license to practice the profession in another state;
- The holder may use any title authorized for the license so long as the title also indicates that the practitioner is retired;
- In the case of a physician assistant, the holder's prescriber number, issued as part of the holder's physician-delegated prescriptive authority, also is placed on retired status;
- In the case of a physician who holds a certificate to recommend medical marijuana, the certificate also is placed on retired status;
- In the case of any physician, the physician is prohibited from holding or practicing under a volunteer's certificate.

### **Reactivation**

The act establishes a process by which the holder of a license placed on retired status may seek to reactivate the license. To do so, the holder must apply to the Medical Board in the form and manner it prescribes and must pay a reactivation fee. The fee is the same amount as the fee for placing a license on retired status.

The act authorizes the Board to reactivate the license if the applicant certifies completion of continuing education and undergoes a criminal records check. The Board also may impose other terms and conditions, which may include requiring the applicant to obtain additional training, pass an examination, and undergo a physical examination and skills assessment.

If the applicant satisfies the foregoing conditions, the Board must reactivate the license, but only if, in its discretion, it determines that the results of the criminal records check do not make the applicant ineligible for active status.

### **Disciplinary actions**

The act authorizes the Medical Board to take disciplinary action against an applicant seeking retired status or reactivation who commits fraud, misrepresentation, or deception in

applying for, or securing, the status or reactivation. The Board also may impose discipline if the holder practices while on retired status, uses the license to obtain licensure in another state, or uses a title that does not reflect the holder's retired status. In disciplining the holder, the Board may impose any sanction that it may impose under continuing law on any other license holder or applicant.

The act also specifies that the placement of a practitioner's license on retired status does not remove or limit the Board's jurisdiction to take any disciplinary action against the practitioner with regard to the license as it existed before being placed on retired status.

### **Criminal records checks under interstate compact**

(R.C. 4731.08; repealed R.C. 4731.112)

The act adds applicants under the Interstate Medical Licensure Compact to a preexisting Revised Code section that specifies criminal records check requirements for physicians. The act repeals a separate, but substantively identical, section that applied only to Compact applicants.

### **Sonographer use of intravenous ultrasound enhancing agents**

(R.C. 4731.37)

#### **Conditions on delegation and administration**

The act authorizes a sonographer to administer, under a physician's delegation, an ultrasound enhancing agent intravenously if several conditions are met. These include the following:

- The delegating physician's normal course of practice and expertise must include the intravenous administration of ultrasound enhancing agents.
- The sonographer must have successfully completed an education and training program in sonography, be certified by a nationally recognized accrediting organization, and have successfully completed training in the intravenous administration of ultrasound enhancing agents. Under the act, training in intravenous administration may be obtained as part of a sonography education and training program, training provided by the delegating physician, or a training program developed and offered by the facility where the physician practices.
- The sonographer must administer the agent in accordance with a written practice protocol developed by the facility. The protocol's standards for intravenous administration must align with clinical standards and industry guidelines.
- The delegating physician must be physically present at the facility where the sonographer administers the agent, though the act specifies that the physician is not required to be in the same room as the sonographer.

## **Intravenous mechanism**

Under the act, the delegated authority to administer an ultrasound enhancing agent intravenously also includes the authority to insert, maintain, and remove an intravenous mechanism.

## **Exemptions**

The act specifies that it does not prohibit any of the following individuals from administering intravenously an ultrasound enhancing agent:

- An individual who is otherwise authorized by statutory law to administer intravenously ultrasound enhancing agents, including a physician assistant, registered nurse, or licensed practical nurse;
- An individual who is awaiting certification or registration as a sonographer and administers the agent under the general supervision of a physician and the direct supervision of either a sonographer with delegated authority to administer agents intravenously or an individual otherwise authorized to administer agents intravenously;
- A student who is enrolled in a sonography education and training program and, as part of the program, administers intravenously ultrasound enhancing agents.

## **Physician assistant prescribing for outpatient behavioral health**

(R.C. 4730.411)

The act authorizes a physician assistant (PA) to prescribe a schedule II controlled substance if the prescription is issued at the site of a behavioral health practice that does not otherwise qualify as a site where a PA may prescribe such a drug. The following limitations apply: (1) the behavioral health practice must be organized to provide outpatient services for treating mental health conditions, substance use disorders, or both, and (2) the PA must have entered into a supervisory agreement with a physician who is employed by the same practice.

## **Practice of acupuncture and herbal therapy**

(Repealed R.C. 4762.11 and 4762.12; R.C. 2919.171, 2919.202, 4731.22, 4734.31, 4762.02, 4762.10, and 4762.19)

The act permits a licensed acupuncturist to practice herbal therapy if the acupuncturist has received a certification from the National Certification Commission for Acupuncture and Oriental Medicine in Chinese herbology or oriental medicine. The act does not, however, prohibit unlicensed individuals from practicing herbal therapy, so long as such individuals do not represent themselves as licensed to practice herbal therapy.

The act eliminates a prior one-year supervisory period for newly licensed acupuncturists. To practice during the supervisory period, a referral or prescription from a physician or chiropractor was required and the practice must have been under the general supervision of the referring or prescribing physician or chiropractor. The act eliminates those requirements and makes conforming changes related to a supervising physician or chiropractor's duties and reimbursement allowances.

Finally, the act removes outstanding references to “oriental medicine” or “oriental medicine practitioner” in the sections that are amended as described above. The change is related to a previous elimination of Medical Board licensure for oriental medicine practitioners from H.B. 442 of the 133<sup>rd</sup> General Assembly. Due to that previous elimination, most references to “oriental medicine” or “oriental medicine practitioners” in the Revised Code are obsolete.<sup>122</sup>

### **Subpoenas for patient record information**

(R.C. 4730.26, 4731.22, 4759.05, 4760.14, 4761.03, 4762.14, 4774.14, and 4778.18)

The act eliminates requirements that the supervising member of the Medical Board approve the issuance of subpoenas for patient record information and be involved in probable cause determinations related to such subpoenas. Prior to the act, both the supervising member and the secretary of the Board were involved in such approvals and determinations. Under the act, the secretary of the Board is solely responsible.

### **Time limit to issue adjudicative order**

(R.C. 4730.25)

The act increases the time the Medical Board has to issue a final adjudicative order related to the summary suspension of a physician assistant’s license to 75 days, up from 60.

### **Public address information for licensees**

(R.C. 4731.071; conforming change in R.C. 2305.113)

The act eliminates a requirement that the Medical Board’s public directory of licensees include a licensee’s contact information, and instead requires it to include the licensee’s business address.

### **Legacy Pain Management Study Committee**

(Section 335.20)

The act establishes the Legacy Pain Management Study Committee to study and evaluate the care and treatment of patients suffering from chronic or debilitating pain, in particular those who have been prescribed opioids for lengthy periods of time, often referred to as legacy patients.

By December 1, 2024, the Committee must prepare and submit to the General Assembly a report of its recommendations for legislation addressing the care and treatment of legacy patients. The Committee ceases to exist on the submission of its report.

### **Membership**

The Committee consists of the following nine members, who must be appointed by November 2, 2023:

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<sup>122</sup> See R.C. 4762.011, not in the act.



- Four members of the 135<sup>th</sup> General Assembly, two appointed by the Speaker of the House and two by the Senate President;
- The Director of the Ohio Department of Mental Health and Addiction Services or Director's designee;
- The President of the Medical Board or President's designee;
- The Executive Director of the Pharmacy Board or Executive Director's designee;
- Two public members, one representing patients appointed by the Speaker and the other representing prescribers appointed by the Senate President.

### **Chairperson and meetings**

Members are to select a chairperson from among the Committee's membership. The Committee must meet as necessary to satisfy the act's requirements. The Medical Board is to provide to the Committee the administrative support necessary to execute its duties.

### **Topics for study and evaluation**

In conducting the required study and evaluation, the Committee is to consider all of the following topics relating to legacy patients:

- The needs of patients experiencing chronic or debilitating pain;
- The challenges associated with tapering opioid doses for pain patients and the need for flexibility and tapering pauses when treating such patients;
- The ways in which communications between patients and prescribers can be improved;
- The availability of and patient access to pain management specialists;
- Any other topic the Committee considers relevant.