

# AN ACT

To amend sections 109.36, 1751.21, 2305.25, 2305.251, 2305.38, 3701.74, 4715.03, 4723.28, 4730.26, 4731.22, 4731.36, 4734.45, 4760.14, and 4762.14; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2305.25 (2305.251) and 2305.251 (2305.252); and to enact new section 2305.25 and section 2305.253 of the Revised Code to modify the law regarding peer review committees of health care entities.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 109.36, 1751.21, 2305.25, 2305.251, 2305.38, 3701.74, 4715.03, 4723.28, 4730.26, 4731.22, 4731.36, 4734.45, 4760.14, and 4762.14 be amended; sections 2305.25 (2305.251) and 2305.251 (2305.252) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new section 2305.25 and section 2305.253 of the Revised Code be enacted to read as follows:

Sec. 109.36. As used in this section and sections 109.361 to 109.366 of the Revised Code:

(A)(1) "Officer or employee" means any of the following:

(a) A person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state ~~or any~~.

(b) A person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the state; ~~or~~.

cal services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the state.

(d) A person who, at the time a cause of action against the person arises, is rendering medical services to patients in a state institution operated by the department of mental health, is a member of the institution's staff, and is performing the services pursuant to an agreement between the state institution and a board of alcohol, drug addiction, and mental health services described in section 340.021 of the Revised Code. "~~Officer~~

(2) "Officer or employee" does not include any person elected, appointed, or employed by any political subdivision of the state.

(B) "State" means the state of Ohio, including but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

(C) "Political subdivisions" of the state means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

(D) "Employer" means the general assembly, the supreme court, any office of an elected state officer, or any department, board, office, commission, agency, institution, or other instrumentality of the state of Ohio that employs or contracts with an officer or employee or to which an officer or employee is elected or appointed.

Sec. 1751.21. (A) A peer review committee of a hospital or other health care facility or provider, or of an intermediary organization or health delivery network, with which a health insuring corporation has a contract for health care services may provide to a peer review committee of the health insuring corporation any information, documents, testimony, or other records relating to any matter that is the subject of evaluation or review by the peer review committees, if consent is provided by the health care facility and any physician or other provider whose professional qualifications or activities are the subject of evaluation or review.

(B) Any immunity from liability for damages that is provided under section ~~2305.25~~ 2305.251 of the Revised Code and that would otherwise apply with respect to the conduct of any peer review committee described in division (A) of this section shall continue to apply, notwithstanding the provision of information as permitted under division (A) of this section.

(C) The information, documents, testimony, or other records described in division (A) of this section, if otherwise protected under section ~~2305.251~~

2305.252 of the Revised Code, shall not be construed as being available for discovery or for use in any civil action solely on the basis that they were provided by the peer review committee as permitted under division (A) of this section.

Sec. 2305.25. As used in this section and sections 2305.251 to 2305.253 of the Revised Code:

(A)(1) "Health care entity" means an entity, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts as part of its regular business activities professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care.

(2) "Health care entity" includes any entity described in division (A)(1) of this section, regardless of whether it is a government entity; for-profit or nonprofit corporation; limited liability company; partnership; professional corporation; state or local society composed of physicians, dentists, optometrists, psychologists, or pharmacists; or other health care organization.

(B) "Health insuring corporation" means an entity that holds a certificate of authority under Chapter 1751. of the Revised Code. "Health insuring corporation" includes wholly owned subsidiaries of a health insuring corporation.

(C) "Hospital" means either of the following:

(1) An institution that has been registered or licensed by the department of health as a hospital;

(2) An entity, other than an insurance company authorized to do business in this state, that owns, controls, or is affiliated with an institution that has been registered or licensed by the department of health as a hospital.

(D) "Incident report or risk management report" means a report of an incident involving injury or potential injury to a patient as a result of patient care provided by health care providers, including both individuals who provide health care and entities that provide health care, that is prepared by or for the use of a peer review committee of a health care entity and is within the scope of the functions of that committee.

(E)(1) "Peer review committee" means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee that does either of the following:

(a) Conducts professional credentialing or quality review activities

involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care;

(b) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

(2) "Peer review committee" includes all of the following:

(a) A peer review committee of a hospital or long-term care facility or a peer review committee of a nonprofit health care corporation that is a member of the hospital or long-term care facility or of which the hospital or facility is a member;

(b) A peer review committee of a community mental health center;

(c) A board or committee of a hospital, a long-term care facility, or other health care entity when reviewing professional qualifications or activities of health care providers, including both individuals who provide health care and entities that provide health care;

(d) A peer review committee, professional standards review committee, or arbitration committee of a state or local society composed of members who are in active practice as physicians, dentists, optometrists, psychologists, or pharmacists;

(e) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient;

(f) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the health insuring corporation to provide health care services to enrollees, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;

(g) A peer review committee of a sickness and accident insurer that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient;

nducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the insurer to provide health care services to insureds, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;

(i) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of medical professional liability insurance in this state that conducts professional quality review activities involving the competence or professional conduct of health care providers that adversely affects or could affect the health or welfare of any patient;

(j) Any other peer review committee of a health care entity.

(F) "Physician" means an individual authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(G) "Sickness and accident insurer" means an entity authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state.

(H) "Tort action" means a civil action for damages for injury, death, or loss to a patient of a health care entity. "Tort action" includes a product liability claim but does not include a civil action for a breach of contract or another agreement between persons.

Sec. 2305.25 2305.251. (A) No hospital, no state or local society, and no health care entity shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee of the health care entity. No individual who is a member of or employee works for or on behalf of any of the following committees a peer review committee of a health care entity shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of the peer review committee:

(A) A utilization review committee, quality assurance, or tissue committee of a hospital or long term care facility, a nonprofit health care corporation which is a member of the hospital or long term care facility or of which the hospital or facility is a member, or a community mental health center;

(B) A board or committee of a hospital or long term care facility or of a nonprofit health care corporation which is a member of the hospital or long term care facility or of which the hospital or long term care facility is a member reviewing professional qualifications or activities of the medical staff of the hospital or long term care facility or applicants for admission to

~~the medical staff;~~

~~(C) A utilization committee of a state or local society composed of doctors of medicine, doctors of osteopathic medicine, or doctors of podiatric medicine;~~

~~(D) A peer review committee, professional standards review committee, or arbitration committee of a state or local society composed of doctors of medicine, doctors of osteopathic medicine, doctors of dentistry, doctors of optometry, doctors of podiatric medicine, psychologists, or pharmacists;~~

~~(E) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers, which conduct adversely affects, or could adversely affect, the health or welfare of any patient. For purposes of this division, "health insuring corporation" includes wholly owned subsidiaries of a health insuring corporation.~~

~~(F) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;~~

~~(G) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the insurer to provide health care services to insureds, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;.~~

(B)(1) A hospital shall be presumed to not be negligent in the credentialing of an individual who has, or has applied for, staff membership or professional privileges at the hospital pursuant to section 3701.351 of the Revised Code, and a health insuring corporation or sickness and accident insurer shall be presumed to not be negligent in the credentialing of an individual who is, or has applied to be, a participating provider with the health insuring corporation or sickness and accident insurer, if the hospital, health insuring corporation, or sickness and accident insurer proves by a preponderance of the evidence that, at the time of the alleged negligent credentialing of the individual, the hospital, health insuring corporation, or

sickness and accident insurer was accredited by one of the following:

(a) The joint commission on accreditation of healthcare organizations;

(b) The American osteopathic association;

(c) The national committee for quality assurance;

(d) The utilization review accreditation commission.

(2) The presumption that a hospital, health insuring corporation, or sickness and accident insurer is not negligent as provided in division (B)(1) of this section may be rebutted only by proof, by a preponderance of the evidence, of any of the following:

(a) The credentialing and review requirements of the accrediting organization did not apply to the hospital, health insuring corporation, sickness and accident insurer, the individual, or the type of professional care that is the basis of the claim against the hospital, health insuring corporation, or sickness and accident insurer.

(b) The hospital, health insuring corporation, or sickness and accident insurer failed to comply with all material credentialing and review requirements of the accrediting organization that applied to the individual.

(c) The hospital, health insuring corporation, or sickness and accident insurer, through its medical staff executive committee or its governing body and sufficiently in advance to take appropriate action, knew that a previously competent individual had developed a pattern of incompetence or otherwise inappropriate behavior, either of which indicated that the individual's staff membership, professional privileges, or participation as a provider should have been limited or terminated prior to the individual's provision of professional care to the plaintiff.

(d) The hospital, health insuring corporation, or sickness and accident insurer, through its medical staff executive committee or its governing body and sufficiently in advance to take appropriate action, knew that a previously competent individual would provide fraudulent medical treatment but failed to limit or terminate the individual's staff membership, professional privileges, or participation as a provider prior to the individual's provision of professional care to the plaintiff.

(3) If the plaintiff fails to rebut the presumption provided in division (B)(1) of this section, upon the motion of the hospital, health insuring corporation, or sickness and accident insurer, the court shall enter judgment in favor of the hospital, health insuring corporation, or sickness and accident insurer on the claim of negligent credentialing.

(C) Nothing in this section otherwise shall relieve any individual or hospital health care entity from liability arising from treatment of a patient or resident an individual. Nothing in this section shall be construed as

creating an exception to section 2305.252 of the Revised Code.

~~This section shall also apply to any member or employee of a nonprofit corporation engaged in performing the functions of a peer review committee of nursing home providers or administrators or of a peer review or professional standards review committee.~~

(D) No person who provides information under this section without malice and in the reasonable belief that the information is warranted by the facts known to the person shall be subject to suit for civil damages as a result of providing the information.

Sec. ~~2305.251~~ 2305.252. Proceedings and records ~~of all review committees described in section 2305.25 of the Revised Code~~ within the scope of a peer review committee of a health care entity shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a health care entity or health care professional, a hospital, a long term care facility, a not for profit health care corporation that is a member of a hospital or long term care facility or of which a hospital or long term care facility is a member, or another health care institution provider, including both individuals who provide health care and entities that provide health care, arising out of matters that are the subject of evaluation and review by the peer review committee. No ~~person in attendance at~~ individual who attends a meeting of a peer review committee ~~or serving,~~ serves as a member of a peer review committee, works for or on behalf of a peer review committee, or provides information to a peer review committee shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the peer review committee or as to any finding, recommendation, evaluation, opinion, or other action of the, committee or a member thereof. Information, documents, or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were produced or presented during proceedings of a peer review committee ~~nor should any person testifying,~~ but the information, documents, or records are available only from the original sources and cannot be obtained from the peer review committee's proceedings or records. An individual who testifies before a peer review committee ~~or who is,~~ serves as a representative of a peer review committee, serves as a member of ~~the~~ a peer review committee, works for or on behalf of a peer review committee, or provides information to a peer review committee shall not be prevented from testifying as to matters within the ~~person's~~ individual's knowledge, but the ~~witness~~ individual cannot be asked about the ~~witness's~~ individual's testimony before the peer review committee.

information the individual provided to the peer review committee, or any opinion the individual formed by the witness as a result of the committee hearing peer review committee's activities. An order by a court to produce for discovery or for use at trial the proceedings or records described in this section is a final order.

Sec. 2305.253. (A) Notwithstanding any contrary provision of section 149.43, 1751.21, 2305.24, 2305.25, 2305.251, 2305.252, or 2305.28 of the Revised Code, an incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a tort action. An individual who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in a tort action as to the contents of the report.

(B)(1) Except as specified in division (A) of this section, this section does not affect any provision of section 149.43, 1751.21, 2305.24, 2305.25, 2305.251, 2305.252, or 2305.28 of the Revised Code that describes, imposes, or confers any of the following:

- (a) An immunity from tort or other civil liability;
- (b) A forfeiture of an immunity from tort or other civil liability;
- (c) A requirement of confidentiality;
- (d) A limitation on the use of information, data, reports, or records;
- (e) Tort or other civil liability;
- (f) A limitation on discovery of matter, introduction into evidence of matter, or testimony pertaining to matter in a tort or other civil action.

(2) Divisions (A) and (B)(1) of this section do not prohibit or limit the discovery or admissibility of testimony or evidence relating to patient care that is within an individual's personal knowledge.

(3) Divisions (A) and (B)(1) and (2) of this section do not affect a privileged communication between an attorney and the attorney's client as described in section 2317.02 of the Revised Code.

Sec. 2305.38. (A) As used in this section:

(1) "Charitable organization" means either of the following:

(a) Any charitable nonprofit corporation that is organized and operated pursuant to Chapter 1702. of the Revised Code, including, but not limited to, any such corporation whose articles of incorporation specify that it is organized and to be operated for an education-related purpose;

(b) Any charitable association, group, institution, or society that is not organized and not operated for profit, including, but not limited to, any such association, group, institution, or society that is organized and operated for any education-related purpose.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services that the volunteer performs for a charitable organization, and that are reimbursed to the volunteer or otherwise paid.

(3) "Corporate services" means services that are performed by a volunteer who is associated with a charitable organization as defined in division (A)(1)(a) of this section and that reflect duties or responsibilities arising under Chapter 1702. of the Revised Code.

(4) "Supervisory services" means services that are performed by a volunteer who is associated with a charitable organization as defined in division (A)(1)(a) or (b) of this section and that involve duties and responsibilities in connection with the supervision of one or more officers, employees, trustees, or other volunteers of that charitable organization.

(5) "Volunteer" means an officer, trustee, or other person who performs services for a charitable organization but does not receive compensation, either directly or indirectly, for those services.

(B) A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the actions or omissions of any of the officers, employees, trustees, or other volunteers of the charitable organization for which the volunteer performs services, unless either of the following applies:

(1) With prior knowledge of an action or omission of a particular officer, employee, trustee, or other volunteer, the volunteer authorizes, approves, or otherwise actively participates in that action or omission.

(2) After an action or omission of a particular officer, employee, trustee, or other volunteer, the volunteer, with full knowledge of that action or omission, ratifies it.

(C) A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the volunteer's actions or omissions in connection with any supervisory or corporate services that the volunteer performs for the charitable organization, unless either of the following applies:

(1) An action or omission of the volunteer involves conduct as described in division (B)(1) or (2) of this section;

(2) An action or omission of the volunteer constitutes willful or wanton misconduct or intentionally tortious conduct.

(D) A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the volunteer's actions or omissions in connection with any nonsupervisory or noncorporate services that the volunteer performs for the charitable organization, unless either of

the following applies:

(1) An action or omission of the volunteer involves conduct as described in division (B)(1) or (2) of this section;

(2) An action or omission of the volunteer constitutes negligence, willful or wanton misconduct, or intentionally tortious conduct.

(E)(1) This section does not create a new cause of action or substantive legal right against a volunteer.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law, to which a volunteer may be entitled under circumstances not covered by this section. This section does not diminish in any respect the immunities provided in section ~~2305.25~~ 2305.251 of the Revised Code. The immunities conferred upon volunteers in this section are not intended to affect the liability of a charitable organization in a civil action for injury, death, or loss to person or property.

**Sec. 3701.74.** (A) As used in this section and section 3701.741 of the Revised Code:

(1) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. "Ambulatory care facility" does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(2) "Chiropractor" means an individual licensed under ~~Chapter~~ Chapter 4734. of the Revised Code to practice chiropractic.

(2)(3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(4) "Health care practitioner" means all of the following:

(a) A dentist or dental hygienist licensed under Chapter 4715. of the Revised Code;

(b) A registered or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(c) An optometrist licensed under Chapter 4725. of the Revised Code;

(d) A dispensing optician, spectacle dispensing optician, contact lens dispensing optician, or spectacle-contact lens dispensing optician licensed under Chapter 4725. of the Revised Code;

(e) A pharmacist licensed under Chapter 4729. of the Revised Code;

(f) A physician;

(g) A physician assistant authorized under Chapter 4730. of the Revised Code to practice as a physician assistant;

(h) A practitioner of a limited branch of medicine issued a certificate under Chapter 4731. of the Revised Code;

(i) A psychologist licensed under Chapter 4732. of the Revised Code;

(j) A chiropractor;

(k) A hearing aid dealer or fitter licensed under Chapter 4747. of the Revised Code;

(l) A speech-language pathologist or audiologist licensed under Chapter 4753. of the Revised Code;

(m) An occupational therapist or occupational therapy assistant licensed under Chapter 4755. of the Revised Code;

(n) A physical therapist or physical therapy assistant licensed under Chapter 4755. of the Revised Code;

(o) A professional clinical counselor, professional counselor, social worker, or independent social worker licensed, or a social work assistant registered, under Chapter 4757. of the Revised Code;

(p) A dietitian licensed under Chapter 4759. of the Revised Code;

(q) A respiratory care professional licensed under Chapter 4761. of the Revised Code;

(r) An emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic certified under Chapter 4765. of the Revised Code.

(5) "Health care provider" ~~has the same meaning as in section 3729.01 of the Revised Code~~ means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(3)(6) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(7) "Long-term care facility" means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; an adult care facility, as defined in section 3722.01 of the Revised Code; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(8) "Medical record" means data in any form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the

patient's health care treatment.

~~(4)~~(9) "Medical records company" means a person who stores, locates, or copies medical records for a health care provider, or is compensated for doing so by a health care provider, and charges a fee for providing medical records to a patient or patient's representative.

~~(5)~~(10) "Patient" means either of the following:

(a) An individual who received health care treatment from a health care provider ~~or from a practitioner~~;

(b) A guardian, as defined in section 1337.11 of the Revised Code, of an individual described in division (A)~~(5)~~(10)(a) of this section.

~~(6)~~(11) "Patient's representative" means a person to whom a patient has given written authorization to act on the patient's behalf regarding the patient's medical records, except that if the patient is deceased, "patient's representative" means the executor or administrator of the patient's estate or the person responsible for the patient's estate if it is not to be probated. "Patient's representative" does not include an insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state or a health insuring corporation holding a certificate of authority under Chapter 1751. of the Revised Code.

~~(7)~~(12) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code.

(13) "Physician" means a person authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or ~~podiatry~~ podiatric medicine and surgery.

~~(5) "Practitioner" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry or an individual licensed under Chapter 4734. of the Revised Code to practice chiropractic.~~

(B) A patient or patient's representative who wishes to examine or obtain a copy of part or all of a medical record shall submit to the health care provider ~~or practitioner~~ a written request signed by the patient dated not more than sixty days before the date on which it is submitted. The patient or patient's representative who wishes to obtain a copy of the record shall indicate in the request whether the copy is to be sent to the patient's residence, physician or chiropractor, or representative, or held for the patient at the office of the health care provider ~~or by the practitioner~~. Within a reasonable time after receiving a request that meets the requirements of this division and includes sufficient information to identify the record requested, a health care provider that has the patient's medical records ~~or practitioner~~ shall permit the patient to examine the record during regular business hours

without charge or, on request, shall provide a copy of the record in accordance with section 3701.741 of the Revised Code, except that if a physician or chiropractor ~~practitioner~~ who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, the health care provider ~~or practitioner~~ shall provide the record to a physician or chiropractor ~~practitioner~~ designated by the patient. The health care provider ~~or practitioner~~ shall take reasonable steps to establish the identity of the person making the request to examine or obtain a copy of the patient's record.

(C) If a health care provider ~~or practitioner~~ fails to furnish a medical record as required by division (B) of this section, the patient or patient's representative who requested the record may bring a civil action to enforce the patient's right of access to the record.

(D)(1) This section does not apply to medical records whose release is covered by section 173.20 or 3721.13 of the Revised Code, by Chapter 1347. or 5122. of the Revised Code, by 42 C.F.R. part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," or by 42 C.F.R. 483.10.

(2) Nothing in this section is intended to supersede the confidentiality provisions of sections 2305.24 ~~to~~, 2305.25, 2305.251, and 2305.252 of the Revised Code.

Sec. 4715.03. (A) The state dental board shall organize by the election from its members of a president and a secretary. It shall hold meetings monthly at least eight months a year at such times and places as the board designates. A majority of the members of the board shall constitute a quorum. The board shall make such reasonable rules as it determines necessary pursuant to Chapter 119. of the Revised Code.

(B) A concurrence of a majority of the members of the board shall be required to grant, refuse, suspend, place on probationary status, revoke, refuse to renew, or refuse to reinstate a license or censure a license holder.

(C) The board shall adopt rules establishing standards for the safe practice of dentistry and dental hygiene by qualified practitioners and shall, through its policies and activities, promote such practice.

The board shall adopt rules in accordance with Chapter 119. of the Revised Code establishing universal blood and body fluid precautions that shall be used by each person licensed under this chapter who performs exposure prone invasive procedures. The rules shall define and establish requirements for universal blood and body fluid precautions that include the following:

- (1) Appropriate use of hand washing;
- (2) Disinfection and sterilization of equipment;

(3) Handling and disposal of needles and other sharp instruments;

(4) Wearing and disposal of gloves and other protective garments and devices.

(D) The board shall administer and enforce the provisions of this chapter. The board shall investigate evidence which appears to show that any person has violated any provision of this chapter. Any person may report to the board under oath any information such person may have appearing to show a violation of any provision of this chapter. In the absence of bad faith, any person who reports such information or who testifies before the board in any disciplinary proceeding conducted pursuant to Chapter 119. of the Revised Code is not liable for civil damages as a result of making the report or providing testimony. If after investigation the board determines that there are reasonable grounds to believe that a violation of this chapter has occurred, the board shall conduct disciplinary proceedings pursuant to Chapter 119. of the Revised Code or provide for a license holder to participate in the quality intervention program established under section 4715.031 of the Revised Code. The board shall not dismiss any complaint or terminate any investigation except by a majority vote of its members. For the purpose of any disciplinary proceeding or any investigation conducted under this division, the board may administer oaths, order the taking of depositions, issue subpoenas, compel the attendance and testimony of persons at depositions and compel the production of books, accounts, papers, documents, or other tangible things. The hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code. Notwithstanding section 121.22 of the Revised Code, proceedings of the board relative to the investigation of a complaint or the determination whether there are reasonable grounds to believe that a violation of this chapter has occurred are confidential and are not subject to discovery in any civil action.

(E) The board shall examine or cause to be examined eligible applicants to practice dentistry and dental hygiene. The board may distinguish by rule different classes of qualified personnel according to skill levels and require all or only certain of these classes of qualified personnel to be examined and certified by the board.

(F) In accordance with Chapter 119. of the Revised Code, the board shall adopt, and may amend or rescind, rules establishing the eligibility criteria, the application and permit renewal procedures, and safety standards applicable to a dentist licensed under this chapter who applies for a permit to employ or use conscious intravenous sedation. These rules shall include all of the following:

(1) The eligibility requirements and application procedures for an eligible dentist to obtain a conscious intravenous sedation permit;

(2) The minimum educational and clinical training standards required of applicants, which shall include satisfactory completion of an advanced cardiac life support course;

(3) The facility equipment and inspection requirements;

(4) Safety standards;

(5) Requirements for reporting adverse occurrences.

Sec. 4723.28. (A) The board of nursing, by a vote of a quorum, may revoke or may refuse to grant a nursing license, certificate of authority, or dialysis technician certificate to a person found by the board to have committed fraud in passing an examination required to obtain the license, certificate of authority, or dialysis technician certificate or to have committed fraud, misrepresentation, or deception in applying for or securing any nursing license, certificate of authority, or dialysis technician certificate issued by the board.

(B) Subject to division (N) of this section, the board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

(1) Denial, revocation, suspension, or restriction of authority to practice a health care occupation, including nursing or practice as a dialysis technician, for any reason other than a failure to renew, in Ohio or another state or jurisdiction;

(2) Engaging in the practice of nursing or engaging in practice as a dialysis technician, having failed to renew a nursing license or dialysis technician certificate issued under this chapter, or while a nursing license or dialysis technician certificate is under suspension;

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, any felony or of any crime involving gross immorality or moral turpitude;

(5) Selling, giving away, or administering drugs or therapeutic devices for other than legal and legitimate therapeutic purposes; or conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, violating any municipal, state, county, or federal drug law;

(6) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

(7) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio;

(8) Self-administering or otherwise taking into the body any dangerous drug, as defined in section 4729.01 of the Revised Code, in any way not in accordance with a legal, valid prescription issued for that individual;

(9) Habitual indulgence in the use of controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs ability to practice;

(10) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of habitual or excessive use of drugs, alcohol, or other chemical substances that impair the ability to practice;

(11) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of a physical or mental disability;

(12) Assaulting or causing harm to a patient or depriving a patient of the means to summon assistance;

(13) Obtaining or attempting to obtain money or anything of value by intentional misrepresentation or material deception in the course of practice;

(14) Adjudication by a probate court of being mentally ill or mentally incompetent. The board may restore the person's nursing license or dialysis technician certificate upon adjudication by a probate court of the person's restoration to competency or upon submission to the board of other proof of competency.

(15) The suspension or termination of employment by the department of defense or the veterans administration of the United States for any act that

violates or would violate this chapter;

(16) Violation of this chapter or any rules adopted under it;

(17) Violation of any restrictions placed on a nursing license or dialysis technician certificate by the board;

(18) Failure to use universal blood and body fluid precautions established by rules adopted under section 4723.07 of the Revised Code;

(19) Failure to practice in accordance with acceptable and prevailing standards of safe nursing care or safe dialysis care;

(20) In the case of a registered nurse, engaging in activities that exceed the practice of nursing as a registered nurse;

(21) In the case of a licensed practical nurse, engaging in activities that exceed the practice of nursing as a licensed practical nurse;

(22) In the case of a dialysis technician, engaging in activities that exceed those permitted under section 4723.72 of the Revised Code;

(23) Aiding and abetting a person in that person's practice of nursing without a license or practice as a dialysis technician without a certificate issued under this chapter;

(24) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, certified nurse practitioner, or advanced practice nurse, except as provided in division (M) of this section, either of the following:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;

(b) Advertising that the nurse will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay.

(25) Failure to comply with the terms and conditions of participation in the chemical dependency monitoring program established under section 4723.35 of the Revised Code;

(26) Failure to comply with the terms and conditions required under the practice intervention and improvement program established under section 4723.282 of the Revised Code;

(27) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner:

(a) Engaging in activities that exceed those permitted for the nurse's nursing specialty under section 4723.43 of the Revised Code;

(b) Failure to meet the quality assurance standards established under section 4723.07 of the Revised Code.

(28) In the case of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, failure to maintain a standard care arrangement in accordance with section 4723.431 of the Revised Code or to practice in accordance with the standard care arrangement;

(29) In the case of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code, failure to prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code;

(30) Prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion;

(31) Failure to establish and maintain professional boundaries with a patient, as specified in rules adopted under section 4723.07 of the Revised Code;

(32) Regardless of whether the contact or verbal behavior is consensual, engaging with a patient other than the spouse of the registered nurse, licensed practical nurse, or dialysis technician in any of the following:

(a) Sexual contact, as defined in section 2907.01 of the Revised Code;

(b) Verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication conducted under Chapter 119. of the Revised Code, except that in lieu of a hearing, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by a vote of a quorum, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the agreement shall be of no effect.

(D) The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code, the board may appoint a hearing examiner, as provided in section 119.09 of the Revised Code, to conduct any hearing the board is authorized to hold under Chapter 119. of the Revised Code.

In any instance in which the board is required under Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the applicant or license holder does not make a timely request for a hearing in accordance with section 119.07 of the Revised Code, the board is not

required to hold a hearing, but may adopt, by a vote of a quorum, a final order that contains the board's findings. In the final order, the board may order any of the sanctions listed in division (A) or (B) of this section.

(E) If a criminal action is brought against a registered nurse, licensed practical nurse, or dialysis technician for an act or crime described in divisions (B)(3) to (7) of this section and the action is dismissed by the trial court other than on the merits, the board shall conduct an adjudication to determine whether the registered nurse, licensed practical nurse, or dialysis technician committed the act on which the action was based. If the board determines on the basis of the adjudication that the registered nurse, licensed practical nurse, or dialysis technician committed the act, or if the registered nurse, licensed practical nurse, or dialysis technician fails to participate in the adjudication, the board may take action as though the registered nurse, licensed practical nurse, or dialysis technician had been convicted of the act.

If the board takes action on the basis of a conviction, plea, or a judicial finding as described in divisions (B)(3) to (7) of this section that is overturned on appeal, the registered nurse, licensed practical nurse, or dialysis technician may, on exhaustion of the appeal process, petition the board for reconsideration of its action. On receipt of the petition and supporting court documents, the board shall temporarily rescind its action. If the board determines that the decision on appeal was a decision on the merits, it shall permanently rescind its action. If the board determines that the decision on appeal was not a decision on the merits, it shall conduct an adjudication to determine whether the registered nurse, licensed practical nurse, or dialysis technician committed the act on which the original conviction, plea, or judicial finding was based. If the board determines on the basis of the adjudication that the registered nurse, licensed practical nurse, or dialysis technician committed such act, or if the registered nurse, licensed practical nurse, or dialysis technician does not request an adjudication, the board shall reinstate its action; otherwise, the board shall permanently rescind its action.

Notwithstanding the provision of division (C)(2) of section 2953.32 of the Revised Code specifying that if records pertaining to a criminal case are sealed under that section the proceedings in the case shall be deemed not to have occurred, sealing of the records of a conviction on which the board has based an action under this section shall have no effect on the board's action or any sanction imposed by the board under this section.

The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F) The board may investigate an individual's criminal background in

performing its duties under this section.

(G) During the course of an investigation conducted under this section, the board may compel any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter to submit to a mental or physical examination, or both, as required by the board and at the expense of the individual, if the board finds reason to believe that the individual under investigation may have a physical or mental impairment that may affect the individual's ability to provide safe nursing care. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations, unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

If the board finds that an individual is impaired, the board shall require the individual to submit to care, counseling, or treatment approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. The individual shall be afforded an opportunity to demonstrate to the board that the individual can begin or resume the individual's occupation in compliance with acceptable and prevailing standards of care under the provisions of the individual's authority to practice.

For purposes of this division, any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(H) The board shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule of the board. Any person may report to the board any information the person may have that appears to show a violation of any provision of this chapter or rule of the board. In the absence of bad faith, any person who reports such information or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of the report or testimony.

(I) All of the following apply under this chapter with respect to the confidentiality of information:

(1) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action, except that the board may disclose information to law enforcement officers and government entities investigating a registered nurse, licensed practical nurse, or dialysis

technician or a person who may have engaged in the unauthorized practice of nursing. No law enforcement officer or government entity with knowledge of any information disclosed by the board pursuant to this division shall divulge the information to any other person or government entity except for the purpose of an adjudication by a court or licensing or registration board or officer to which the person to whom the information relates is a party.

(2) If an investigation requires a review of patient records, the investigation and proceeding shall be conducted in such a manner as to protect patient confidentiality.

(3) All adjudications and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

(4) Any board activity that involves continued monitoring of an individual as part of or following any disciplinary action taken under this section shall be conducted in a manner that maintains the individual's confidentiality. Information received or maintained by the board with respect to the board's monitoring activities is confidential and not subject to discovery in any civil action.

(J) Any action taken by the board under this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the person may be reinstated to practice.

(K) When the board refuses to grant a license or certificate to an applicant, revokes a license or certificate, or refuses to reinstate a license or certificate, the board may specify that its action is permanent. An individual subject to permanent action taken by the board is forever ineligible to hold a license or certificate of the type that was refused or revoked and the board shall not accept from the individual an application for reinstatement of the license or certificate or for a new license or certificate.

(L) No unilateral surrender of a nursing license, certificate of authority, or dialysis technician certificate issued under this chapter shall be effective unless accepted by majority vote of the board. No application for a nursing license, certificate of authority, or dialysis technician certificate issued under this chapter may be withdrawn without a majority vote of the board. The board's jurisdiction to take disciplinary action under this section is not removed or limited when an individual has a license or certificate classified as inactive or fails to renew a license or certificate.

(M) Sanctions shall not be imposed under division (B)(24) of this section against any licensee who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.

(N)(1) Any person who enters a prelicensure nursing education program on or after June 1, 2003, and who subsequently applies under division (A) of section 4723.09 of the Revised Code for licensure to practice as a registered nurse or as a licensed practical nurse and any person who applies under division (B) of that section for license by endorsement to practice nursing as a registered nurse or as a licensed practical nurse shall submit a request to the bureau of criminal identification and investigation for the bureau to conduct a criminal records check of the applicant and to send the results to the board, in accordance with section 4723.09 of the Revised Code.

The board shall refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse under section 4723.09 of the Revised Code to a person who entered a prelicensure nursing education program on or after June 1, 2003, and applied under division (A) of section 4723.09 of the Revised Code for the license or a person who applied under division (B) of that section for the license, if the criminal records check performed in accordance with division (C) of that section indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for violating section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, or 2911.11 of the Revised Code or a substantially similar law of another state, the United States, or another country.

(2) Any person who enters a dialysis training program on or after June 1, 2003, and who subsequently applies for a certificate to practice as a dialysis technician shall submit a request to the bureau of criminal identification and investigation for the bureau to conduct a criminal records check of the applicant and to send the results to the board, in accordance with section 4723.75 of the Revised Code.

The board shall refuse to issue a certificate to practice as a dialysis technician under section 4723.75 of the Revised Code to a person who entered a dialysis training program on or after June 1, 2003, and whose criminal records check performed in accordance with division (C) of that section indicates that the person has pleaded guilty to, been convicted of, or

has had a judicial finding of guilt for violating section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, or 2911.11 of the Revised Code or a substantially similar law of another state, the United States, or another country.

Sec. 4730.26. (A) The state medical board shall investigate evidence that appears to show that any person has violated this chapter or a rule adopted under it. Any person may report to the board in a signed writing any information the person has that appears to show a violation of any provision of this chapter or rule adopted under it. In the absence of bad faith, a person who reports such information or testifies before the board in an adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of reporting the information or providing testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and be recorded by the board.

(B) Investigations of alleged violations of this chapter or rules adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4730.33 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. A member of the board who supervises the investigation of a case shall not participate in further adjudication of the case.

(C) In investigating a possible violation of this chapter or a rule adopted under it, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or a rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's

deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is a physician assistant, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(D) All hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

(E) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure

confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(F) The state medical board shall develop requirements for and provide appropriate initial and continuing training for investigators employed by the board to carry out its duties under this chapter. The training and continuing education may include enrollment in courses operated or approved by the Ohio peace officer training council that the board considers appropriate under conditions set forth in section 109.79 of the Revised Code.

(G) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (1) The case number assigned to the complaint or alleged violation;
- (2) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;
- (3) A description of the allegations contained in the complaint;
- (4) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be submitted to the physician assistant policy committee of the board and is a public record for purposes of section 149.43 of the Revised Code.

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud during the administration of the examination for a certificate to practice or to have committed fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

- (1) Permitting one's name or one's certificate to practice or certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;
- (2) Failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;
- (3) Selling, giving away, personally furnishing, prescribing, or

administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports to a child fatality review board under sections 307.621 to 307.629 of the Revised Code and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33

of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's certificate. For the purpose of this division, any individual who applies for or receives a certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except when civil penalties are imposed under section 4731.225 or 4731.281 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in

division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of any abortion rule adopted by the public health council pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing an application for or holding a certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so

by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for their determination.

The board may reinstate a certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require

continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;

(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) Failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in a pilot program under section 4723.52 of the Revised Code;

(31) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's file;

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

(33) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;

(34) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

(35) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a

subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(36) Failure to supervise an acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for supervision of an acupuncturist;

(37) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under

it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is a person whose practice is authorized by this chapter, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the

subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(4) All hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

(5) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver of that nature is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board

has completed its activities:

- (a) The case number assigned to the complaint or alleged violation;
- (b) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(G) If the secretary and supervising member determine that there is clear and convincing evidence that an individual has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.

The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. A failure to issue the order within sixty days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the

order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's certificate to practice. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

(I) The certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after suspension shall be considered practicing without a certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose certificate is suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's certificate to practice.

(J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended

pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a certificate issued under this chapter shall not be effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a certificate made under the provisions of this chapter may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a certificate of registration in accordance with this chapter shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

(N) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(O) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

Sec. 4731.36. (A) Sections 4731.01 to 4731.47 of the Revised Code shall not prohibit service in case of emergency, domestic administration of family remedies, or provision of assistance to another individual who is self-administering drugs.

Sections 4731.01 to 4731.47 of the Revised Code shall not apply to any of the following:

(1) A commissioned medical officer of the United States armed forces, as defined in section 5903.11 of the Revised Code, or an employee of the veterans administration of the United States or the United States public health service in the discharge of the officer's or employee's professional duties;

(2) A dentist authorized under Chapter 4715. of the Revised Code to practice dentistry when engaged exclusively in the practice of dentistry or when administering anesthetics in the practice of dentistry;

(3) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein when providing consultation to an individual holding a certificate to practice issued under this chapter who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation, if one of the following applies:

(a) The physician or surgeon does not provide consultation in this state on a regular or frequent basis.

(b) The physician or surgeon provides the consultation without

compensation of any kind, direct or indirect, for the consultation.

(c) The consultation is part of the curriculum of a medical school or osteopathic medical school of this state or a program described in division (A)(2) of section 4731.291 of the Revised Code.

(4) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein and provided services to a patient in that state or territory, when providing, not later than one year after the last date services were provided in another state or territory, follow-up services in person or through the use of any communication, including oral, written, or electronic communication, in this state to the patient for the same condition;

(5) A physician or surgeon residing on the border of a contiguous state and authorized under the laws thereof to practice medicine and surgery therein, whose practice extends within the limits of this state. Such practitioner shall not either in person or through the use of any communication, including oral, written, or electronic communication, open an office or appoint a place to see patients or receive calls within the limits of this state.

(6) A board, committee, or corporation engaged in the conduct described in division (A) of section ~~2305.25~~ 2305.251 of the Revised Code when acting within the scope of the functions of the board, committee, or corporation;

(7) The conduct of an independent review organization accredited by the superintendent of insurance under section 3901.80 of the Revised Code for the purpose of external reviews conducted under sections 1751.84, 1751.85, 3923.67, 3923.68, 3923.76, and 3923.77 of the Revised Code.

(B) Sections 4731.51 to 4731.61 of the Revised Code do not apply to any graduate of a podiatric school or college while performing those acts that may be prescribed by or incidental to participation in an accredited podiatric internship, residency, or fellowship program situated in this state approved by the state medical board.

(C) This chapter does not apply to an acupuncturist who complies with Chapter 4762. of the Revised Code.

(D) This chapter does not prohibit the administration of drugs by any of the following:

(1) An individual who is licensed or otherwise specifically authorized by the Revised Code to administer drugs;

(2) An individual who is not licensed or otherwise specifically authorized by the Revised Code to administer drugs, but is acting pursuant to the rules for delegation of medical tasks adopted under section 4731.053

of the Revised Code;

(3) An individual specifically authorized to administer drugs pursuant to a rule adopted under the Revised Code that is in effect on the effective date of this amendment, as long as the rule remains in effect, specifically authorizing an individual to administer drugs.

(E) The exemptions described in divisions (A)(3), (4), and (5) of this section do not apply to a physician or surgeon whose certificate to practice issued under this chapter is under suspension or has been revoked or permanently revoked by action of the state medical board.

Sec. 4734.45. (A) The state chiropractic board shall investigate evidence that appears to show that a person has violated any provision of this chapter or the rules adopted under it. Any person may report to the board in writing or by other means any information the person has that appears to show a violation of any provision of this chapter or the rules adopted under it. In the absence of bad faith, a person who reports to the board, cooperates in an investigation, or testifies before the board in an adjudication shall not be liable for civil damages as a result of reporting, cooperating, or providing testimony.

(B) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action, except that for good cause, the board or its executive director may disclose or authorize disclosure of information gathered pursuant to an investigation.

The board and its employees may share appropriate information in the board's possession with any federal, state, or local law enforcement, prosecutorial, or regulatory agency or its officers or agents engaging in an investigation. The board and its employees may cooperate in any other manner with the agency or its officers or agents engaging in an investigation.

An agency that receives confidential information shall comply with the same requirements regarding confidentiality as those with which the board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency that applies when the agency is dealing with other information in its possession. The information may be admitted into evidence in a criminal trial in accordance with the Rules of Evidence, or in an administrative hearing conducted by an agency, but the court or agency shall require that appropriate measures be taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients, complainants, or others whose confidentiality was protected by the state chiropractic board when the information was in the board's possession.

Measures to ensure confidentiality that may be taken by the court or agency include sealing its records or redacting specific information from its records.

(C) All hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

Sec. 4760.14. (A) The state medical board shall investigate evidence that appears to show that any person has violated this chapter or the rules adopted under it. Any person may report to the board in a signed writing any information the person has that appears to show a violation of any provision of this chapter or the rules adopted under it. In the absence of bad faith, a person who reports such information or testifies before the board in an adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of reporting the information or providing testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and be recorded by the board.

(B) Investigations of alleged violations of this chapter or rules adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4760.15 of the Revised Code. The board's president may designate another member of the board to supervise the investigation in place of the supervising member. A member of the board who supervises the investigation of a case shall not participate in further adjudication of the case.

(C) In investigating a possible violation of this chapter or the rules adopted under it, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or the rules adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's

deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is an anesthesiologist assistant, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(D) All hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

(E) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(F) The state medical board shall develop requirements for and provide

appropriate initial training and continuing education for investigators employed by the board to carry out its duties under this chapter. The training and continuing education may include enrollment in courses operated or approved by the Ohio peace officer training council that the board considers appropriate under conditions set forth in section 109.79 of the Revised Code.

(G) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (1) The case number assigned to the complaint or alleged violation;
- (2) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;
- (3) A description of the allegations contained in the complaint;
- (4) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in a manner that protects the identity of each person involved in each case. The report is a public record for purposes of section 149.43 of the Revised Code.

Sec. 4762.14. (A) The state medical board shall investigate evidence that appears to show that any person has violated this chapter or the rules adopted under it. Any person may report to the board in a signed writing any information the person has that appears to show a violation of any provision of this chapter or the rules adopted under it. In the absence of bad faith, a person who reports such information or testifies before the board in an adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of reporting the information or providing testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and be recorded by the board.

(B) Investigations of alleged violations of this chapter or rules adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4762.15 of the Revised Code. The board's president may designate another member of the board to supervise the investigation in place of the supervising member. A member of the board who supervises the investigation of a case shall not participate in further adjudication of the case.

(C) In investigating a possible violation of this chapter or the rules adopted under it, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and

production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or the rules adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is an acupuncturist, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(D) All hearings and investigations of the board shall be considered civil actions for the purposes of section ~~2305.251~~ 2305.252 of the Revised Code.

(E) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged

lations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(F) The state medical board shall develop requirements for and provide appropriate initial training and continuing education for investigators employed by the board to carry out its duties under this chapter. The training and continuing education may include enrollment in courses operated or approved by the Ohio peace officer training council that the board considers appropriate under conditions set forth in section 109.79 of the Revised Code.

(G) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (1) The case number assigned to the complaint or alleged violation;
- (2) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;
- (3) A description of the allegations contained in the complaint;
- (4) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in a manner that protects the identity of each person involved in each case. The report is a public record for purposes of section 149.43 of the Revised Code.

SECTION 2. That existing sections 109.36, 1751.21, 2305.25, 2305.251, 2305.38, 3701.74, 4715.03, 4723.28, 4730.26, 4731.22, 4731.36, 4734.45, 4760.14, and 4762.14 of the Revised Code are hereby repealed.

SECTION 3. Section 3701.74 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 508 and Sub. H.B. 506 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_