

**As Reported by the Senate Health, Human Services and Aging
Committee**

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Sub. S. B. No. 179

SENATOR Wachtmann

A B I L L

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:

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(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~~.

(c) A person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering peer review, utilization review, or drug utilization review services in relation to 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.

(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

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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

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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) "Health care entity" means a government entity, a for-profit or nonprofit corporation, a limited liability company, a partnership, a professional corporation, a state or local society composed of physicians, or other health care organization, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts as part of its purpose professional credentialing or quality review activities involving the competence, professional conduct, or quality of care provided by health care providers, including both individuals and entities.

(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 by a health care entity that

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is prepared by or for the use of a peer review committee 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, professional conduct, or
quality of care provided by health care providers, including both
individuals and entities;

(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, but is not limited to,
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 and entities;

(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

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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 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;

(h) 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 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

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affects or could affect the health or welfare of any patient; 174

(j) A peer review committee of a health care entity. 175

(F) "Physician" means an individual authorized to practice 176
medicine and surgery, osteopathic medicine and surgery, or 177
podiatric medicine and surgery. 178

(G) "Sickness and accident insurer" means an entity 179
authorized under Title XXXIX of the Revised Code to do the 180
business of sickness and accident insurance in this state. 181

(H) "Tort action" means a civil action for damages for 182
injury, death, or loss to a patient of a health care entity. "Tort 183
action" includes a product liability claim but does not include a 184
civil action for a breach of contract or another agreement between 185
persons. 186

Sec. 2305.25 2305.251. (A) No hospital, no state or local 187
society, health care entity and no individual who works for or on 188
behalf of a health care entity shall be liable in damages to any 189
person for any acts, omissions, decisions, or other conduct within 190
the scope of the functions of a peer review committee of the 191
health care entity. No individual who is a member of or employee 192
works for or on behalf of any of the following committees a peer 193
review committee of a health care entity shall be liable in 194
damages to any person for any acts, omissions, decisions, or other 195
conduct within the scope of the functions of the peer review 196
committee. 197

(A) A utilization review committee, quality assurance, or 198
tissue committee of a hospital or long-term care facility, a 199
nonprofit health care corporation which is a member of the 200
hospital or long-term care facility or of which the hospital or 201
facility is a member, or a community mental health center; 202

(B) A board or committee of a hospital or long-term care 203

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~~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;~~

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~~(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, if the hospital proves by a preponderance of the evidence that, at the time of the alleged negligent credentialing of the individual, the hospital 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 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, the individual, or the type of professional care that is the basis of the claim against the hospital.

(b) The hospital failed to comply with all material

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credentialing and review requirements of the accrediting
organization that applied to the individual.

(c) The hospital, through its medical staff executive
committee or its governing body and sufficiently in advance to
take appropriate action, knew that a previously competent
individual who has, or has applied for, staff membership or
professional privileges at the hospital had developed a pattern of
incompetence or otherwise inappropriate behavior, either of which
indicated that the individual's staff membership or professional
privileges should have been limited prior to the individual's
provision of professional care to the plaintiff at the hospital.

(d) The hospital, through its medical staff executive
committee or its governing body and sufficiently in advance to
take appropriate action, knew that a previously competent
individual who has, or has applied for, staff membership or
professional privileges at the hospital would provide fraudulent
medical treatment but failed to limit the individual's staff
membership or professional privileges prior to the individual's
provision of professional care to the plaintiff at the hospital.

(3) If the plaintiff fails to rebut the presumption provided
in division (B)(1) of this section, upon the motion of the
hospital, the court shall enter judgment in favor of the hospital
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

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~~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~~ 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, as long as the information, documents, or records are obtained from the original sources and not from the peer review committee's proceedings or records. An individual who testifies before a peer review~~

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~~committee or who is, serves as a representative of a peer review~~ 328
~~committee, serves as a member of the a peer review committee,~~ 329
~~works for or on behalf of a peer review committee, or provides~~ 330
~~information to a peer review committee shall not be prevented from~~ 331
~~testifying as to matters within the person's individual's~~ 332
~~knowledge, but the witness individual cannot be asked about the~~ 333
~~witness's individual's testimony before the peer review committee,~~ 334
~~information the individual provided to the peer review committee,~~ 335
~~or any opinion the individual formed by the witness as a result of~~ 336
~~the committee hearing peer review committee's activities. An order~~ 337
~~by a court to produce for discovery or for use at trial the~~ 338
~~proceedings or records described in this section is a final order.~~ 339

Sec. 2305.253. (A) Notwithstanding any contrary provision of 341
section 149.43, 1751.21, 2305.24, 2305.25, 2305.251, 2305.252, or 342
2305.28 of the Revised Code, an incident report or risk management 343
report and the contents of an incident report or risk management 344
report are not subject to discovery in, and are not admissible in 345
evidence in the trial of, a tort action. An individual who 346
prepares or has knowledge of the contents of an incident report or 347
risk management report shall not testify and shall not be required 348
to testify in a tort action as to the contents of the report. This 349
division does not prohibit or limit the discovery or admissibility 350
of testimony or evidence relating to patient care that is within 351
an individual's personal knowledge. 352

(B)(1) Except as specified in division (A) of this section, 353
this section does not affect any provision of section 1751.21, 354
2305.24, 2305.25, 2305.251, 2305.252, or 2305.28 of the Revised 355
Code that describes, imposes, or confers any of the following: 356

(a) An immunity from tort or other civil liability; 357

(b) A forfeiture of an immunity from tort or other civil 358

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<u>liability;</u>	359
<u>(c) A requirement of confidentiality;</u>	360
<u>(d) A limitation on the use of information, data, reports, or</u>	361
<u>records;</u>	362
<u>(e) Tort or other civil liability;</u>	363
<u>(f) A limitation on discovery of matter, introduction into</u>	364
<u>evidence of matter, or testimony pertaining to matter in a tort or</u>	365
<u>other civil action.</u>	366
<u>(2) This section does not affect a privileged communication</u>	367
<u>between an attorney and the attorney's client as described in</u>	368
<u>section 2317.02 of the Revised Code.</u>	369
 Sec. 2305.38. (A) As used in this section:	370
(1) "Charitable organization" means either of the following:	371
(a) Any charitable nonprofit corporation that is organized	372
and operated pursuant to Chapter 1702. of the Revised Code,	373
including, but not limited to, any such corporation whose articles	374
of incorporation specify that it is organized and to be operated	375
for an education-related purpose;	376
(b) Any charitable association, group, institution, or	377
society that is not organized and not operated for profit,	378
including, but not limited to, any such association, group,	379
institution, or society that is organized and operated for any	380
education-related purpose.	381
(2) "Compensation" does not include actual and necessary	382
expenses that are incurred by a volunteer in connection with the	383
services that the volunteer performs for a charitable	384
organization, and that are reimbursed to the volunteer or	385
otherwise paid.	386
(3) "Corporate services" means services that are performed by	387

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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

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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:

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(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

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<u>the Revised Code to practice as a physician assistant;</u>	479
<u>(h) A practitioner of a limited branch of medicine issued a</u>	480
<u>certificate under Chapter 4731. of the Revised Code;</u>	481
<u>(i) A psychologist licensed under Chapter 4732. of the</u>	482
<u>Revised Code;</u>	483
<u>(j) A chiropractor;</u>	484
<u>(k) A hearing aid dealer or fitter licensed under Chapter</u>	485
<u>4747. of the Revised Code;</u>	486
<u>(l) A speech-language pathologist or audiologist licensed</u>	487
<u>under Chapter 4753. of the Revised Code;</u>	488
<u>(m) An occupational therapist or occupational therapy</u>	489
<u>assistant licensed under Chapter 4755. of the Revised Code;</u>	490
<u>(n) A physical therapist or physical therapy assistant</u>	491
<u>licensed under Chapter 4755. of the Revised Code;</u>	492
<u>(o) A professional clinical counselor, professional</u>	493
<u>counselor, social worker, or independent social worker licensed,</u>	494
<u>or a social work assistant registered, under Chapter 4757. of the</u>	495
<u>Revised Code;</u>	496
<u>(p) A dietitian licensed under Chapter 4759. of the Revised</u>	497
<u>Code;</u>	498
<u>(q) A respiratory care professional licensed under Chapter</u>	499
<u>4761. of the Revised Code;</u>	500
<u>(r) An emergency medical technician-basic, emergency medical</u>	501
<u>technician-intermediate, or emergency medical technician-paramedic</u>	502
<u>certified under Chapter 4765. of the Revised Code.</u>	503
<u>(5) "Health care provider" has the same meaning as in section</u>	504
<u>3729.01 of the Revised Code means a hospital, ambulatory care</u>	505
<u>facility, long-term care facility, pharmacy, emergency facility,</u>	506
<u>or health care practitioner.</u>	507

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~~(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

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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

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provide a copy of the record in accordance with section 3701.741 571
of the Revised Code, except that if a physician or chiropractor 572
~~practitioner~~ who has treated the patient determines for clearly 573
stated treatment reasons that disclosure of the requested record 574
is likely to have an adverse effect on the patient, the health 575
care provider ~~or practitioner~~ shall provide the record to a 576
physician or chiropractor ~~practitioner~~ designated by the patient. 577
The health care provider ~~or practitioner~~ shall take reasonable 578
steps to establish the identity of the person making the request 579
to examine or obtain a copy of the patient's record. 580

(C) If a health care provider ~~or practitioner~~ fails to 582
furnish a medical record as required by division (B) of this 583
section, the patient or patient's representative who requested the 584
record may bring a civil action to enforce the patient's right of 585
access to the record. 586

(D)(1) This section does not apply to medical records whose 587
release is covered by section 173.20 or 3721.13 of the Revised 588
Code, by Chapter 1347. or 5122. of the Revised Code, by 42 C.F.R. 589
part 2, "Confidentiality of Alcohol and Drug Abuse Patient 590
Records," or by 42 C.F.R. 483.10. 591

(2) Nothing in this section is intended to supersede the 592
confidentiality provisions of sections 2305.24 ~~to~~, 2305.25, 593
2305.251, and 2305.252 of the Revised Code. 594

Sec. 4715.03. (A) The state dental board shall organize by 595
the election from its members of a president and a secretary. It 596
shall hold meetings monthly at least eight months a year at such 597
times and places as the board designates. A majority of the 598
members of the board shall constitute a quorum. The board shall 599
make such reasonable rules as it determines necessary pursuant to 600
Chapter 119. of the Revised Code. 601

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(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

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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:

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(1) The eligibility requirements and application procedures 665
for an eligible dentist to obtain a conscious intravenous sedation 666
permit; 667

(2) The minimum educational and clinical training standards 668
required of applicants, which shall include satisfactory 669
completion of an advanced cardiac life support course; 670

(3) The facility equipment and inspection requirements; 671

(4) Safety standards; 672

(5) Requirements for reporting adverse occurrences. 673

Sec. 4723.28. (A) The board of nursing, by a vote of a 674
quorum, may revoke or may refuse to grant a nursing license, 675
certificate of authority, or dialysis technician certificate to a 676
person found by the board to have committed fraud in passing an 677
examination required to obtain the license, certificate of 678
authority, or dialysis technician certificate or to have committed 679
fraud, misrepresentation, or deception in applying for or securing 680
any nursing license, certificate of authority, or dialysis 681
technician certificate issued by the board. 682

(B) The board of nursing, ~~and~~ by a vote of a quorum, may 683
impose one or more of the following sanctions: deny, revoke, 684
suspend, or place restrictions on any nursing license, certificate 685
of authority, or dialysis technician certificate issued by the 686
board; reprimand or otherwise discipline a holder of a nursing 687
license, certificate of authority, or dialysis technician 688
certificate; or impose a fine of not more than five hundred 689
dollars per violation. The sanctions may be imposed for any of the 690
following: 691

(1) Denial, revocation, suspension, or restriction of 692
authority to practice a health care occupation, including nursing 693
or practice as a dialysis technician, for any reason other than a 694

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failure to renew, in Ohio or another state or jurisdiction; 695

(2) Engaging in the practice of nursing or engaging in 696
practice as a dialysis technician, having failed to renew a 697
nursing license or dialysis technician certificate issued under 698
this chapter, or while a nursing license or dialysis technician 699
certificate is under suspension; 700

(3) Conviction of, a plea of guilty to, a judicial finding of 701
guilt of, a judicial finding of guilt resulting from a plea of no 702
contest to, or a judicial finding of eligibility for intervention 703
in lieu of conviction for, a misdemeanor committed in the course 704
of practice; 705

(4) Conviction of, a plea of guilty to, a judicial finding of 706
guilt of, a judicial finding of guilt resulting from a plea of no 707
contest to, or a judicial finding of eligibility for intervention 708
in lieu of conviction for, any felony or of any crime involving 709
gross immorality or moral turpitude; 710

(5) Selling, giving away, or administering drugs or 711
therapeutic devices for other than legal and legitimate 712
therapeutic purposes; or conviction of, a plea of guilty to, a 713
judicial finding of guilt of, a judicial finding of guilt 714
resulting from a plea of no contest to, or a judicial finding of 715
eligibility for intervention in lieu of conviction for, violating 716
any municipal, state, county, or federal drug law; 717

(6) Conviction of, a plea of guilty to, a judicial finding of 718
guilt of, a judicial finding of guilt resulting from a plea of no 719
contest to, or a judicial finding of eligibility for intervention 720
in lieu of conviction for, an act in another jurisdiction that 721
would constitute a felony or a crime of moral turpitude in Ohio; 722
723

(7) Conviction of, a plea of guilty to, a judicial finding of 724
guilt of, a judicial finding of guilt resulting from a plea of no 725

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- 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~~
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

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States for any act that violates or would violate this chapter;	757
(16) Violation of this chapter or any rules adopted under it;	758
	759
(17) Violation of any restrictions placed on a nursing	760
license or dialysis technician certificate by the board;	761
(18) Failure to use universal blood and body fluid	762
precautions established by rules adopted under section 4723.07 of	763
the Revised Code;	764
(19) Failure to practice in accordance with acceptable and	765
prevailing standards of safe nursing care or safe dialysis care;	766
(20) In the case of a registered nurse, engaging in	767
activities that exceed the practice of nursing as a registered	768
nurse;	769
(21) In the case of a licensed practical nurse, engaging in	770
activities that exceed the practice of nursing as a licensed	771
practical nurse;	772
(22) In the case of a dialysis technician, engaging in	773
activities that exceed those permitted under section 4723.72 of	774
the Revised Code;	775
(23) Aiding and abetting a person in that person's practice	776
of nursing without a license or practice as a dialysis technician	777
without a certificate issued under this chapter;	778
(24) In the case of a certified registered nurse anesthetist,	779
clinical nurse specialist, certified nurse-midwife, certified	780
nurse practitioner, or advanced practice nurse, except as provided	781
in division (M) of this section, either of the following:	782
	783
(a) Waiving the payment of all or any part of a deductible or	784
copayment that a patient, pursuant to a health insurance or health	785
care policy, contract, or plan that covers such nursing services,	786

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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

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Revised Code, failure to prescribe drugs and therapeutic devices 817
in accordance with section 4723.481 of the Revised Code; 818

(30) Prescribing any drug or device to perform or induce an 819
abortion, or otherwise performing or inducing an abortion; 820

(31) Failure to establish and maintain professional 821
boundaries with a patient, as specified in rules adopted under 822
section 4723.07 of the Revised Code; 823

(32) Regardless of whether the contact or verbal behavior is 824
consensual, engaging with a patient other than the spouse of the 825
registered nurse, licensed practical nurse, or dialysis technician 826
in any of the following: 827

(a) Sexual contact, as defined in section 2907.01 of the 828
Revised Code; 829

(b) Verbal behavior that is sexually demeaning to the patient 830
or may be reasonably interpreted by the patient as sexually 831
demeaning. 832

(C) Disciplinary actions taken by the board under divisions 833
(A) and (B) of this section shall be taken pursuant to an 834
adjudication conducted under Chapter 119. of the Revised Code, 835
except that in lieu of a hearing, the board may enter into a 836
consent agreement with an individual to resolve an allegation of a 837
violation of this chapter or any rule adopted under it. A consent 838
agreement, when ratified by a vote of a quorum, shall constitute 839
the findings and order of the board with respect to the matter 840
addressed in the agreement. If the board refuses to ratify a 841
consent agreement, the admissions and findings contained in the 842
agreement shall be of no effect. 843

(D) The hearings of the board shall be conducted in 844
accordance with Chapter 119. of the Revised Code, the board may 845
appoint a hearing examiner, as provided in section 119.09 of the 846
Revised Code, to conduct any hearing the board is authorized to 847

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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

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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

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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:

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(1) Information received by the board pursuant to an 943
investigation is confidential and not subject to discovery in any 944
civil action, except that the board may disclose information to 945
law enforcement officers and government entities investigating a 946
registered nurse, licensed practical nurse, or dialysis technician 947
or a person who may have engaged in the unauthorized practice of 948
nursing. No law enforcement officer or government entity with 949
knowledge of any information disclosed by the board pursuant to 950
this division shall divulge the information to any other person or 951
government entity except for the purpose of an adjudication by a 952
court or licensing or registration board or officer to which the 953
person to whom the information relates is a party. 954

(2) If an investigation requires a review of patient records, 955
the investigation and proceeding shall be conducted in such a 956
manner as to protect patient confidentiality. 957

(3) All adjudications and investigations of the board shall 958
be considered civil actions for the purposes of section ~~2305.251~~ 959
2305.252 of the Revised Code. 960

(4) Any board activity that involves continued monitoring of 961
an individual as part of or following any disciplinary action 962
taken under this section shall be conducted in a manner that 963
maintains the individual's confidentiality. Information received 964
or maintained by the board with respect to the board's monitoring 965
activities is confidential and not subject to discovery in any 966
civil action. 967

(J) Any action taken by the board under this section 968
resulting in a suspension from practice shall be accompanied by a 969
written statement of the conditions under which the person may be 970
reinstated to practice. 971

(K) When the board refuses to grant a license or certificate 972
to an applicant, revokes a license or certificate, or refuses to 973

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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.

Sec. 4730.26. (A) The state medical board shall investigate
evidence that appears to show that any person has violated this

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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

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may apply only to records that cover a reasonable period of time 1037
surrounding the alleged violation. 1038

On failure to comply with any subpoena issued by the board 1039
and after reasonable notice to the person being subpoenaed, the 1040
board may move for an order compelling the production of persons 1041
or records pursuant to the Rules of Civil Procedure. 1042

A subpoena issued by the board may be served by a sheriff, 1043
the sheriff's deputy, or a board employee designated by the board. 1044
Service of a subpoena issued by the board may be made by 1045
delivering a copy of the subpoena to the person named therein, 1046
reading it to the person, or leaving it at the person's usual 1047
place of residence. When the person being served is a physician 1048
assistant, service of the subpoena may be made by certified mail, 1049
restricted delivery, return receipt requested, and the subpoena 1050
shall be deemed served on the date delivery is made or the date 1051
the person refuses to accept delivery. 1052

A sheriff's deputy who serves a subpoena shall receive the 1053
same fees as a sheriff. Each witness who appears before the board 1054
in obedience to a subpoena shall receive the fees and mileage 1055
provided for witnesses in civil cases in the courts of common 1056
pleas. 1057

(D) All hearings and investigations of the board shall be 1058
considered civil actions for the purposes of section ~~2305.251~~ 1059
2305.252 of the Revised Code. 1060

(E) Information received by the board pursuant to an 1061
investigation is confidential and not subject to discovery in any 1062
civil action. 1063

The board shall conduct all investigations and proceedings in 1064
a manner that protects the confidentiality of patients and persons 1065
who file complaints with the board. The board shall not make 1066
public the names or any other identifying information about 1067

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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

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officer training council that the board considers appropriate 1100
under conditions set forth in section 109.79 of the Revised Code. 1101

(G) On a quarterly basis, the board shall prepare a report 1102
that documents the disposition of all cases during the preceding 1103
three months. The report shall contain the following information 1104
for each case with which the board has completed its activities: 1105

(1) The case number assigned to the complaint or alleged 1106
violation; 1107

(2) The type of certificate to practice, if any, held by the 1108
individual against whom the complaint is directed; 1109

(3) A description of the allegations contained in the 1110
complaint; 1111

(4) The disposition of the case. 1112

The report shall state how many cases are still pending, and 1113
shall be prepared in a manner that protects the identity of each 1114
person involved in each case. The report shall be submitted to the 1115
physician assistant policy committee of the board and is a public 1116
record for purposes of section 149.43 of the Revised Code. 1117

Sec. 4731.22. (A) The state medical board, by an affirmative 1118
vote of not fewer than six of its members, may revoke or may 1119
refuse to grant a certificate to a person found by the board to 1120
have committed fraud during the administration of the examination 1121
for a certificate to practice or to have committed fraud, 1122
misrepresentation, or deception in applying for or securing any 1123
certificate to practice or certificate of registration issued by 1124
the board. 1125

(B) The board, by an affirmative vote of not fewer than six 1126
members, shall, to the extent permitted by law, limit, revoke, or 1127
suspend an individual's certificate to practice, refuse to 1128
register an individual, refuse to reinstate a certificate, or 1129

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reprimand or place on probation the holder of a certificate for 1130
one or more of the following reasons: 1131

(1) Permitting one's name or one's certificate to practice or 1132
certificate of registration to be used by a person, group, or 1133
corporation when the individual concerned is not actually 1134
directing the treatment given; 1135

(2) Failure to maintain minimal standards applicable to the 1136
selection or administration of drugs, or failure to employ 1137
acceptable scientific methods in the selection of drugs or other 1138
modalities for treatment of disease; 1139

(3) Selling, giving away, personally furnishing, prescribing, 1140
or administering drugs for other than legal and legitimate 1141
therapeutic purposes or a plea of guilty to, a judicial finding of 1142
guilt of, or a judicial finding of eligibility for intervention in 1143
lieu of conviction of, a violation of any federal or state law 1144
regulating the possession, distribution, or use of any drug; 1145
1146

(4) Willfully betraying a professional confidence. 1147

For purposes of this division, "willfully betraying a 1148
professional confidence" does not include providing any 1149
information, documents, or reports to a child fatality review 1150
board under sections 307.621 to 307.629 of the Revised Code and 1151
does not include the making of a report of an employee's use of a 1152
drug of abuse, or a report of a condition of an employee other 1153
than one involving the use of a drug of abuse, to the employer of 1154
the employee as described in division (B) of section 2305.33 of 1155
the Revised Code. Nothing in this division affects the immunity 1156
from civil liability conferred by that section upon a physician 1157
who makes either type of report in accordance with division (B) of 1158
that section. As used in this division, "employee," "employer," 1159
and "physician" have the same meanings as in section 2305.33 of 1160

the Revised Code. 1161

(5) Making a false, fraudulent, deceptive, or misleading 1162
statement in the solicitation of or advertising for patients; in 1163
relation to the practice of medicine and surgery, osteopathic 1164
medicine and surgery, podiatric medicine and surgery, or a limited 1165
branch of medicine; or in securing or attempting to secure any 1166
certificate to practice or certificate of registration issued by 1167
the board. 1168

As used in this division, "false, fraudulent, deceptive, or 1169
misleading statement" means a statement that includes a 1170
misrepresentation of fact, is likely to mislead or deceive because 1171
of a failure to disclose material facts, is intended or is likely 1172
to create false or unjustified expectations of favorable results, 1173
or includes representations or implications that in reasonable 1174
probability will cause an ordinarily prudent person to 1175
misunderstand or be deceived. 1176

(6) A departure from, or the failure to conform to, minimal 1177
standards of care of similar practitioners under the same or 1178
similar circumstances, whether or not actual injury to a patient 1179
is established; 1180

(7) Representing, with the purpose of obtaining compensation 1181
or other advantage as personal gain or for any other person, that 1182
an incurable disease or injury, or other incurable condition, can 1183
be permanently cured; 1184

(8) The obtaining of, or attempting to obtain, money or 1185
anything of value by fraudulent misrepresentations in the course 1186
of practice; 1187

(9) A plea of guilty to, a judicial finding of guilt of, or a 1188
judicial finding of eligibility for intervention in lieu of 1189
conviction for, a felony; 1190

(10) Commission of an act that constitutes a felony in this 1191

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state, regardless of the jurisdiction in which the act was 1192
committed; 1193

(11) A plea of guilty to, a judicial finding of guilt of, or 1194
a judicial finding of eligibility for intervention in lieu of 1195
conviction for, a misdemeanor committed in the course of practice; 1196

(12) Commission of an act in the course of practice that 1197
constitutes a misdemeanor in this state, regardless of the 1198
jurisdiction in which the act was committed; 1199

(13) A plea of guilty to, a judicial finding of guilt of, or 1200
a judicial finding of eligibility for intervention in lieu of 1201
conviction for, a misdemeanor involving moral turpitude; 1202

(14) Commission of an act involving moral turpitude that 1203
constitutes a misdemeanor in this state, regardless of the 1204
jurisdiction in which the act was committed; 1205

(15) Violation of the conditions of limitation placed by the 1206
board upon a certificate to practice; 1207

(16) Failure to pay license renewal fees specified in this 1208
chapter; 1209

(17) Except as authorized in section 4731.31 of the Revised 1210
Code, engaging in the division of fees for referral of patients, 1211
or the receiving of a thing of value in return for a specific 1212
referral of a patient to utilize a particular service or business; 1213

(18) Subject to section 4731.226 of the Revised Code, 1214
violation of any provision of a code of ethics of the American 1215
medical association, the American osteopathic association, the 1216
American podiatric medical association, or any other national 1217
professional organizations that the board specifies by rule. The 1218
state medical board shall obtain and keep on file current copies 1219
of the codes of ethics of the various national professional 1220
organizations. The individual whose certificate is being suspended 1221

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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

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1254 presentation of evidence. If the board finds an individual unable
1255 to practice because of the reasons set forth in this division, the
1256 board shall require the individual to submit to care, counseling,
1257 or treatment by physicians approved or designated by the board, as
1258 a condition for initial, continued, reinstated, or renewed
1259 authority to practice. An individual affected under this division
1260 shall be afforded an opportunity to demonstrate to the board the
1261 ability to resume practice in compliance with acceptable and
1262 prevailing standards under the provisions of the individual's
1263 certificate. For the purpose of this division, any individual who
1264 applies for or receives a certificate to practice under this
1265 chapter accepts the privilege of practicing in this state and, by
1266 so doing, shall be deemed to have given consent to submit to a
1267 mental or physical examination when directed to do so in writing
1268 by the board, and to have waived all objections to the
1269 admissibility of testimony or examination reports that constitute
1270 a privileged communication.

1271 (20) Except when civil penalties are imposed under section
1272 4731.225 or 4731.281 of the Revised Code, and subject to section
1273 4731.226 of the Revised Code, violating or attempting to violate,
1274 directly or indirectly, or assisting in or abetting the violation
1275 of, or conspiring to violate, any provisions of this chapter or
1276 any rule promulgated by the board.

1277 This division does not apply to a violation or attempted
1278 violation of, assisting in or abetting the violation of, or a
1279 conspiracy to violate, any provision of this chapter or any rule
1280 adopted by the board that would preclude the making of a report by
1281 a physician of an employee's use of a drug of abuse, or of a
1282 condition of an employee other than one involving the use of a
1283 drug of abuse, to the employer of the employee as described in
1284 division (B) of section 2305.33 of the Revised Code. Nothing in
1285 this division affects the immunity from civil liability conferred

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by that section upon a physician who makes either type of report 1286
in accordance with division (B) of that section. As used in this 1287
division, "employee," "employer," and "physician" have the same 1288
meanings as in section 2305.33 of the Revised Code. 1289

(21) The violation of any abortion rule adopted by the public 1290
health council pursuant to section 3701.341 of the Revised Code; 1291
1292

(22) Any of the following actions taken by the agency 1293
responsible for regulating the practice of medicine and surgery, 1294
osteopathic medicine and surgery, podiatric medicine and surgery, 1295
or the limited branches of medicine in another jurisdiction, for 1296
any reason other than the nonpayment of fees: the limitation, 1297
revocation, or suspension of an individual's license to practice; 1298
acceptance of an individual's license surrender; denial of a 1299
license; refusal to renew or reinstate a license; imposition of 1300
probation; or issuance of an order of censure or other reprimand; 1301

(23) The violation of section 2919.12 of the Revised Code or 1302
the performance or inducement of an abortion upon a pregnant woman 1303
with actual knowledge that the conditions specified in division 1304
(B) of section 2317.56 of the Revised Code have not been satisfied 1305
or with a heedless indifference as to whether those conditions 1306
have been satisfied, unless an affirmative defense as specified in 1307
division (H)(2) of that section would apply in a civil action 1308
authorized by division (H)(1) of that section; 1309

(24) The revocation, suspension, restriction, reduction, or 1310
termination of clinical privileges by the United States department 1311
of defense or department of veterans affairs or the termination or 1312
suspension of a certificate of registration to prescribe drugs by 1313
the drug enforcement administration of the United States 1314
department of justice; 1315

(25) Termination or suspension from participation in the 1316

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medicare or medicaid programs by the department of health and 1317
human services or other responsible agency for any act or acts 1318
that also would constitute a violation of division (B)(2), (3), 1319
(6), (8), or (19) of this section; 1320

(26) Impairment of ability to practice according to 1321
acceptable and prevailing standards of care because of habitual or 1322
excessive use or abuse of drugs, alcohol, or other substances that 1323
impair ability to practice. 1324

For the purposes of this division, any individual authorized 1325
to practice by this chapter accepts the privilege of practicing in 1326
this state subject to supervision by the board. By filing an 1327
application for or holding a certificate to practice under this 1328
chapter, an individual shall be deemed to have given consent to 1329
submit to a mental or physical examination when ordered to do so 1330
by the board in writing, and to have waived all objections to the 1331
admissibility of testimony or examination reports that constitute 1332
privileged communications. 1333

If it has reason to believe that any individual authorized to 1334
practice by this chapter or any applicant for certification to 1335
practice suffers such impairment, the board may compel the 1336
individual to submit to a mental or physical examination, or both. 1337
The expense of the examination is the responsibility of the 1338
individual compelled to be examined. Any mental or physical 1339
examination required under this division shall be undertaken by a 1340
treatment provider or physician who is qualified to conduct the 1341
examination and who is chosen by the board. 1342

Failure to submit to a mental or physical examination ordered 1343
by the board constitutes an admission of the allegations against 1344
the individual unless the failure is due to circumstances beyond 1345
the individual's control, and a default and final order may be 1346
entered without the taking of testimony or presentation of 1347
evidence. If the board determines that the individual's ability to 1348

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practice is impaired, the board shall suspend the individual's 1349
certificate or deny the individual's application and shall require 1350
the individual, as a condition for initial, continued, reinstated, 1351
or renewed certification to practice, to submit to treatment. 1352

Before being eligible to apply for reinstatement of a 1353
certificate suspended under this division, the impaired 1354
practitioner shall demonstrate to the board the ability to resume 1355
practice in compliance with acceptable and prevailing standards of 1356
care under the provisions of the practitioner's certificate. The 1357
demonstration shall include, but shall not be limited to, the 1358
following: 1359

(a) Certification from a treatment provider approved under 1360
section 4731.25 of the Revised Code that the individual has 1361
successfully completed any required inpatient treatment; 1362

(b) Evidence of continuing full compliance with an aftercare 1363
contract or consent agreement; 1364

(c) Two written reports indicating that the individual's 1365
ability to practice has been assessed and that the individual has 1366
been found capable of practicing according to acceptable and 1367
prevailing standards of care. The reports shall be made by 1368
individuals or providers approved by the board for making the 1369
assessments and shall describe the basis for their determination. 1370

The board may reinstate a certificate suspended under this 1371
division after that demonstration and after the individual has 1372
entered into a written consent agreement. 1373

When the impaired practitioner resumes practice, the board 1374
shall require continued monitoring of the individual. The 1375
monitoring shall include, but not be limited to, compliance with 1376
the written consent agreement entered into before reinstatement or 1377
with conditions imposed by board order after a hearing, and, upon 1378
termination of the consent agreement, submission to the board for 1379

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at least two years of annual written progress reports made under 1380
penalty of perjury stating whether the individual has maintained 1381
sobriety. 1382

(27) A second or subsequent violation of section 4731.66 or 1383
4731.69 of the Revised Code; 1384

(28) Except as provided in division (N) of this section: 1385

(a) Waiving the payment of all or any part of a deductible or 1386
copayment that a patient, pursuant to a health insurance or health 1387
care policy, contract, or plan that covers the individual's 1388
services, otherwise would be required to pay if the waiver is used 1389
as an enticement to a patient or group of patients to receive 1390
health care services from that individual; 1391

(b) Advertising that the individual will waive the payment of 1392
all or any part of a deductible or copayment that a patient, 1393
pursuant to a health insurance or health care policy, contract, or 1394
plan that covers the individual's services, otherwise would be 1395
required to pay. 1396

(29) Failure to use universal blood and body fluid 1397
precautions established by rules adopted under section 4731.051 of 1398
the Revised Code; 1399

(30) Failure of a collaborating physician to fulfill the 1400
responsibilities agreed to by the physician and an advanced 1401
practice nurse participating in a pilot program under section 1402
4723.52 of the Revised Code; 1403

(31) Failure to provide notice to, and receive acknowledgment 1404
of the notice from, a patient when required by section 4731.143 of 1405
the Revised Code prior to providing nonemergency professional 1406
services, or failure to maintain that notice in the patient's 1407
file; 1408

(32) Failure of a physician supervising a physician assistant 1409

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to maintain supervision in accordance with the requirements of 1410
Chapter 4730. of the Revised Code and the rules adopted under that 1411
chapter; 1412

(33) Failure of a physician or podiatrist to enter into a 1413
standard care arrangement with a clinical nurse specialist, 1414
certified nurse-midwife, or certified nurse practitioner with whom 1415
the physician or podiatrist is in collaboration pursuant to 1416
section 4731.27 of the Revised Code or failure to fulfill the 1417
responsibilities of collaboration after entering into a standard 1418
care arrangement; 1419

(34) Failure to comply with the terms of a consult agreement 1420
entered into with a pharmacist pursuant to section 4729.39 of the 1421
Revised Code; 1422

(35) Failure to cooperate in an investigation conducted by 1423
the board under division (F) of this section, including failure to 1424
comply with a subpoena or order issued by the board or failure to 1425
answer truthfully a question presented by the board at a 1426
deposition or in written interrogatories, except that failure to 1427
cooperate with an investigation shall not constitute grounds for 1428
discipline under this section if a court of competent jurisdiction 1429
has issued an order that either quashes a subpoena or permits the 1430
individual to withhold the testimony or evidence in issue; 1431

(36) Failure to supervise an acupuncturist in accordance with 1432
Chapter 4762. of the Revised Code and the board's rules for 1433
supervision of an acupuncturist; 1434

(37) Failure to supervise an anesthesiologist assistant in 1435
accordance with Chapter 4760. of the Revised Code and the board's 1436
rules for supervision of an anesthesiologist assistant. 1437

(C) Disciplinary actions taken by the board under divisions 1438
(A) and (B) of this section shall be taken pursuant to an 1439
adjudication under Chapter 119. of the Revised Code, except that 1440

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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

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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.

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On failure to comply with any subpoena issued by the board 1505
and after reasonable notice to the person being subpoenaed, the 1506
board may move for an order compelling the production of persons 1507
or records pursuant to the Rules of Civil Procedure. 1508

A subpoena issued by the board may be served by a sheriff, 1509
the sheriff's deputy, or a board employee designated by the board. 1510
Service of a subpoena issued by the board may be made by 1511
delivering a copy of the subpoena to the person named therein, 1512
reading it to the person, or leaving it at the person's usual 1513
place of residence. When the person being served is a person whose 1514
practice is authorized by this chapter, service of the subpoena 1515
may be made by certified mail, restricted delivery, return receipt 1516
requested, and the subpoena shall be deemed served on the date 1517
delivery is made or the date the person refuses to accept 1518
delivery. 1519

A sheriff's deputy who serves a subpoena shall receive the 1520
same fees as a sheriff. Each witness who appears before the board 1521
in obedience to a subpoena shall receive the fees and mileage 1522
provided for witnesses in civil cases in the courts of common 1523
pleas. 1524

(4) All hearings and investigations of the board shall be 1525
considered civil actions for the purposes of section ~~2305.251~~ 1526
2305.252 of the Revised Code. 1527

(5) Information received by the board pursuant to an 1528
investigation is confidential and not subject to discovery in any 1529
civil action. 1530

The board shall conduct all investigations and proceedings in 1531
a manner that protects the confidentiality of patients and persons 1532
who file complaints with the board. The board shall not make 1533
public the names or any other identifying information about 1534
patients or complainants unless proper consent is given or, in the 1535

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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;

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(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

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otherwise agreed to by both the board and the individual. 1599

Any summary suspension imposed under this division shall 1600
remain in effect, unless reversed on appeal, until a final 1601
adjudicative order issued by the board pursuant to this section 1602
and Chapter 119. of the Revised Code becomes effective. The board 1603
shall issue its final adjudicative order within sixty days after 1604
completion of its hearing. A failure to issue the order within 1605
sixty days shall result in dissolution of the summary suspension 1606
order but shall not invalidate any subsequent, final adjudicative 1607
order. 1608

(H) If the board takes action under division (B)(9), (11), or 1609
(13) of this section and the judicial finding of guilt, guilty 1610
plea, or judicial finding of eligibility for intervention in lieu 1611
of conviction is overturned on appeal, upon exhaustion of the 1612
criminal appeal, a petition for reconsideration of the order may 1613
be filed with the board along with appropriate court documents. 1614
Upon receipt of a petition of that nature and supporting court 1615
documents, the board shall reinstate the individual's certificate 1616
to practice. The board may then hold an adjudication under Chapter 1617
119. of the Revised Code to determine whether the individual 1618
committed the act in question. Notice of an opportunity for a 1619
hearing shall be given in accordance with Chapter 119. of the 1620
Revised Code. If the board finds, pursuant to an adjudication held 1621
under this division, that the individual committed the act or if 1622
no hearing is requested, the board may order any of the sanctions 1623
identified under division (B) of this section. 1624

(I) The certificate to practice issued to an individual under 1626
this chapter and the individual's practice in this state are 1627
automatically suspended as of the date the individual pleads 1628
guilty to, is found by a judge or jury to be guilty of, or is 1629
subject to a judicial finding of eligibility for intervention in 1630

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lieu of conviction in this state or treatment or intervention in 1631
lieu of conviction in another jurisdiction for any of the 1632
following criminal offenses in this state or a substantially 1633
equivalent criminal offense in another jurisdiction: aggravated 1634
murder, murder, voluntary manslaughter, felonious assault, 1635
kidnapping, rape, sexual battery, gross sexual imposition, 1636
aggravated arson, aggravated robbery, or aggravated burglary. 1637
Continued practice after suspension shall be considered practicing 1638
without a certificate. 1639

The board shall notify the individual subject to the 1640
suspension by certified mail or in person in accordance with 1641
section 119.07 of the Revised Code. If an individual whose 1642
certificate is suspended under this division fails to make a 1643
timely request for an adjudication under Chapter 119. of the 1644
Revised Code, the board shall enter a final order permanently 1645
revoking the individual's certificate to practice. 1646

(J) If the board is required by Chapter 119. of the Revised 1647
Code to give notice of an opportunity for a hearing and if the 1648
individual subject to the notice does not timely request a hearing 1649
in accordance with section 119.07 of the Revised Code, the board 1650
is not required to hold a hearing, but may adopt, by an 1651
affirmative vote of not fewer than six of its members, a final 1652
order that contains the board's findings. In that final order, the 1653
board may order any of the sanctions identified under division (A) 1654
or (B) of this section. 1655

(K) Any action taken by the board under division (B) of this 1656
section resulting in a suspension from practice shall be 1657
accompanied by a written statement of the conditions under which 1658
the individual's certificate to practice may be reinstated. The 1659
board shall adopt rules governing conditions to be imposed for 1660
reinstatement. Reinstatement of a certificate suspended pursuant 1661
to division (B) of this section requires an affirmative vote of 1662

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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.

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(2) For professional services rendered to any other person	1695
authorized to practice pursuant to this chapter, to the extent	1696
allowed by this chapter and rules adopted by the board.	1697
(O) Under the board's investigative duties described in this	1698
section and subject to division (F) of this section, the board	1699
shall develop and implement a quality intervention program	1700
designed to improve through remedial education the clinical and	1701
communication skills of individuals authorized under this chapter	1702
to practice medicine and surgery, osteopathic medicine and	1703
surgery, and podiatric medicine and surgery. In developing and	1704
implementing the quality intervention program, the board may do	1705
all of the following:	1706
(1) Offer in appropriate cases as determined by the board an	1707
educational and assessment program pursuant to an investigation	1708
the board conducts under this section;	1709
(2) Select providers of educational and assessment services,	1710
including a quality intervention program panel of case reviewers;	1711
(3) Make referrals to educational and assessment service	1712
providers and approve individual educational programs recommended	1713
by those providers. The board shall monitor the progress of each	1714
individual undertaking a recommended individual educational	1715
program.	1716
(4) Determine what constitutes successful completion of an	1717
individual educational program and require further monitoring of	1718
the individual who completed the program or other action that the	1719
board determines to be appropriate;	1720
(5) Adopt rules in accordance with Chapter 119. of the	1721
Revised Code to further implement the quality intervention	1722
program.	1723
An individual who participates in an individual educational	1724

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program pursuant to this division shall pay the financial 1725
obligations arising from that educational program. 1726

Sec. 4731.36. (A) Sections 4731.01 to 4731.47 of the Revised 1727
Code shall not prohibit service in case of emergency, domestic 1728
administration of family remedies, or provision of assistance to 1729
another individual who is self-administering drugs. 1730

Sections 4731.01 to 4731.47 of the Revised Code shall not 1731
apply to any of the following: 1732

(1) A commissioned medical officer of the United States armed 1733
forces, as defined in section 5903.11 of the Revised Code, or an 1734
employee of the veterans administration of the United States or 1735
the United States public health service in the discharge of the 1736
officer's or employee's professional duties; 1737

(2) A dentist authorized under Chapter 4715. of the Revised 1738
Code to practice dentistry when engaged exclusively in the 1739
practice of dentistry or when administering anesthetics in the 1740
practice of dentistry; 1741

(3) A physician or surgeon in another state or territory who 1742
is a legal practitioner of medicine or surgery therein when 1743
providing consultation to an individual holding a certificate to 1744
practice issued under this chapter who is responsible for the 1745
examination, diagnosis, and treatment of the patient who is the 1746
subject of the consultation, if one of the following applies: 1747

(a) The physician or surgeon does not provide consultation in 1748
this state on a regular or frequent basis. 1749

(b) The physician or surgeon provides the consultation 1750
without compensation of any kind, direct or indirect, for the 1751
consultation. 1752

(c) The consultation is part of the curriculum of a medical 1753
school or osteopathic medical school of this state or a program 1754

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described in division (A)(2) of section 4731.291 of the Revised
Code. 1755
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(4) A physician or surgeon in another state or territory who 1757
is a legal practitioner of medicine or surgery therein and 1758
provided services to a patient in that state or territory, when 1759
providing, not later than one year after the last date services 1760
were provided in another state or territory, follow-up services in 1761
person or through the use of any communication, including oral, 1762
written, or electronic communication, in this state to the patient 1763
for the same condition; 1764

(5) A physician or surgeon residing on the border of a 1765
contiguous state and authorized under the laws thereof to practice 1766
medicine and surgery therein, whose practice extends within the 1767
limits of this state. Such practitioner shall not either in person 1768
or through the use of any communication, including oral, written, 1769
or electronic communication, open an office or appoint a place to 1770
see patients or receive calls within the limits of this state. 1771
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(6) A board, committee, or corporation engaged in the conduct 1773
described in division (A) of section ~~2305.25~~ 2305.251 of the 1774
Revised Code when acting within the scope of the functions of the 1775
board, committee, or corporation; 1776

(7) The conduct of an independent review organization 1777
accredited by the superintendent of insurance under section 1778
3901.80 of the Revised Code for the purpose of external reviews 1779
conducted under sections 1751.84, 1751.85, 3923.67, 3923.68, 1780
3923.76, and 3923.77 of the Revised Code. 1781

(B) Sections 4731.51 to 4731.61 of the Revised Code do not 1782
apply to any graduate of a podiatric school or college while 1783
performing those acts that may be prescribed by or incidental to 1784
participation in an accredited podiatric internship, residency, or 1785

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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

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board in an adjudication shall not be liable for civil damages as 1816
a result of reporting, cooperating, or providing testimony. 1817

(B) Information received by the board pursuant to an 1818
investigation is confidential and not subject to discovery in any 1819
civil action, except that for good cause, the board or its 1820
executive director may disclose or authorize disclosure of 1821
information gathered pursuant to an investigation. 1822

The board and its employees may share appropriate information 1823
in the board's possession with any federal, state, or local law 1824
enforcement, prosecutorial, or regulatory agency or its officers 1825
or agents engaging in an investigation. The board and its 1826
employees may cooperate in any other manner with the agency or its 1827
officers or agents engaging in an investigation. 1828

An agency that receives confidential information shall comply 1829
with the same requirements regarding confidentiality as those with 1830
which the board must comply, notwithstanding any conflicting 1831
provision of the Revised Code or procedure of the agency that 1832
applies when the agency is dealing with other information in its 1833
possession. The information may be admitted into evidence in a 1834
criminal trial in accordance with the Rules of Evidence, or in an 1835
administrative hearing conducted by an agency, but the court or 1836
agency shall require that appropriate measures be taken to ensure 1837
that confidentiality is maintained with respect to any part of the 1838
information that contains names or other identifying information 1839
about patients, complainants, or others whose confidentiality was 1840
protected by the state chiropractic board when the information was 1841
in the board's possession. Measures to ensure confidentiality that 1842
may be taken by the court or agency include sealing its records or 1843
redacting specific information from its records. 1844

(C) All hearings and investigations of the board shall be 1845
considered civil actions for the purposes of section ~~2305.251~~ 1846

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2305.252 of the Revised Code.

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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.

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(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.

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(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

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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.

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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

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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

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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,

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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 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

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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.

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The report shall state how many cases are still pending, and 2066
shall be prepared in a manner that protects the identity of each 2067
person involved in each case. The report is a public record for 2068
purposes of section 149.43 of the Revised Code. 2069

Section 2. That existing sections 109.36, 1751.21, 2305.25, 2070
2305.251, 2305.38, 3701.74, 4715.03, 4723.28, 4730.26, 4731.22, 2071
4731.36, 4734.45, 4760.14, and 4762.14 of the Revised Code are 2072
hereby repealed. 2073

Section 3. Section 3701.74 of the Revised Code is presented 2074
in this act as a composite of the section as amended by both Am. 2075
Sub. H.B. 508 and Sub. H.B. 506 of the 123rd General Assembly. The 2076
General Assembly, applying the principle stated in division (B) of 2077
section 1.52 of the Revised Code that amendments are to be 2078
harmonized if reasonably capable of simultaneous operation, finds 2079
that the composite is the resulting version of the section in 2080
effect prior to the effective date of the section as presented in 2081
this act. 2082