

As Introduced

**129th General Assembly
Regular Session
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H. B. No. 520

Representatives Celeste, Hagan, R.

Cosponsors: Representatives Foley, Yuko, Williams

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A B I L L

To amend section 4731.22 and to enact section 4731.45 1
of the Revised Code to require physicians to take 2
certain actions before and after issuing 3
prescriptions for drugs intended to treat symptoms 4
of erectile dysfunction. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4731.22 be amended and section 6
4731.45 of the Revised Code be enacted to read as follows: 7

Sec. 4731.22. (A) The state medical board, by an affirmative 8
vote of not fewer than six of its members, may revoke or may 9
refuse to grant a certificate to a person found by the board to 10
have committed fraud during the administration of the examination 11
for a certificate to practice or to have committed fraud, 12
misrepresentation, or deception in applying for or securing any 13
certificate to practice or certificate of registration issued by 14
the board. 15

(B) The board, by an affirmative vote of not fewer than six 16
members, shall, to the extent permitted by law, limit, revoke, or 17
suspend an individual's certificate to practice, refuse to 18
register an individual, refuse to reinstate a certificate, or 19

reprimand or place on probation the holder of a certificate for 20
one or more of the following reasons: 21

(1) Permitting one's name or one's certificate to practice or 22
certificate of registration to be used by a person, group, or 23
corporation when the individual concerned is not actually 24
directing the treatment given; 25

(2) Failure to maintain minimal standards applicable to the 26
selection or administration of drugs, or failure to employ 27
acceptable scientific methods in the selection of drugs or other 28
modalities for treatment of disease; 29

(3) Selling, giving away, personally furnishing, prescribing, 30
or administering drugs for other than legal and legitimate 31
therapeutic purposes or a plea of guilty to, a judicial finding of 32
guilt of, or a judicial finding of eligibility for intervention in 33
lieu of conviction of, a violation of any federal or state law 34
regulating the possession, distribution, or use of any drug; 35

(4) Willfully betraying a professional confidence. 36

For purposes of this division, "willfully betraying a 37
professional confidence" does not include providing any 38
information, documents, or reports to a child fatality review 39
board under sections 307.621 to 307.629 of the Revised Code and 40
does not include the making of a report of an employee's use of a 41
drug of abuse, or a report of a condition of an employee other 42
than one involving the use of a drug of abuse, to the employer of 43
the employee as described in division (B) of section 2305.33 of 44
the Revised Code. Nothing in this division affects the immunity 45
from civil liability conferred by that section upon a physician 46
who makes either type of report in accordance with division (B) of 47
that section. As used in this division, "employee," "employer," 48
and "physician" have the same meanings as in section 2305.33 of 49
the Revised Code. 50

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

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

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

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

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

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

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

committed;	82
(11) A plea of guilty to, a judicial finding of guilt of, or	83
a judicial finding of eligibility for intervention in lieu of	84
conviction for, a misdemeanor committed in the course of practice;	85
(12) Commission of an act in the course of practice that	86
constitutes a misdemeanor in this state, regardless of the	87
jurisdiction in which the act was committed;	88
(13) A plea of guilty to, a judicial finding of guilt of, or	89
a judicial finding of eligibility for intervention in lieu of	90
conviction for, a misdemeanor involving moral turpitude;	91
(14) Commission of an act involving moral turpitude that	92
constitutes a misdemeanor in this state, regardless of the	93
jurisdiction in which the act was committed;	94
(15) Violation of the conditions of limitation placed by the	95
board upon a certificate to practice;	96
(16) Failure to pay license renewal fees specified in this	97
chapter;	98
(17) Except as authorized in section 4731.31 of the Revised	99
Code, engaging in the division of fees for referral of patients,	100
or the receiving of a thing of value in return for a specific	101
referral of a patient to utilize a particular service or business;	102
(18) Subject to section 4731.226 of the Revised Code,	103
violation of any provision of a code of ethics of the American	104
medical association, the American osteopathic association, the	105
American podiatric medical association, or any other national	106
professional organizations that the board specifies by rule. The	107
state medical board shall obtain and keep on file current copies	108
of the codes of ethics of the various national professional	109
organizations. The individual whose certificate is being suspended	110
or revoked shall not be found to have violated any provision of a	111

code of ethics of an organization not appropriate to the 112
individual's profession. 113

For purposes of this division, a "provision of a code of 114
ethics of a national professional organization" does not include 115
any provision that would preclude the making of a report by a 116
physician of an employee's use of a drug of abuse, or of a 117
condition of an employee other than one involving the use of a 118
drug of abuse, to the employer of the employee as described in 119
division (B) of section 2305.33 of the Revised Code. Nothing in 120
this division affects the immunity from civil liability conferred 121
by that section upon a physician who makes either type of report 122
in accordance with division (B) of that section. As used in this 123
division, "employee," "employer," and "physician" have the same 124
meanings as in section 2305.33 of the Revised Code. 125

(19) Inability to practice according to acceptable and 126
prevailing standards of care by reason of mental illness or 127
physical illness, including, but not limited to, physical 128
deterioration that adversely affects cognitive, motor, or 129
perceptive skills. 130

In enforcing this division, the board, upon a showing of a 131
possible violation, may compel any individual authorized to 132
practice by this chapter or who has submitted an application 133
pursuant to this chapter to submit to a mental examination, 134
physical examination, including an HIV test, or both a mental and 135
a physical examination. The expense of the examination is the 136
responsibility of the individual compelled to be examined. Failure 137
to submit to a mental or physical examination or consent to an HIV 138
test ordered by the board constitutes an admission of the 139
allegations against the individual unless the failure is due to 140
circumstances beyond the individual's control, and a default and 141
final order may be entered without the taking of testimony or 142
presentation of evidence. If the board finds an individual unable 143

to practice because of the reasons set forth in this division, the 144
board shall require the individual to submit to care, counseling, 145
or treatment by physicians approved or designated by the board, as 146
a condition for initial, continued, reinstated, or renewed 147
authority to practice. An individual affected under this division 148
shall be afforded an opportunity to demonstrate to the board the 149
ability to resume practice in compliance with acceptable and 150
prevailing standards under the provisions of the individual's 151
certificate. For the purpose of this division, any individual who 152
applies for or receives a certificate to practice under this 153
chapter accepts the privilege of practicing in this state and, by 154
so doing, shall be deemed to have given consent to submit to a 155
mental or physical examination when directed to do so in writing 156
by the board, and to have waived all objections to the 157
admissibility of testimony or examination reports that constitute 158
a privileged communication. 159

(20) Except when civil penalties are imposed under section 160
4731.225 or 4731.281 of the Revised Code, and subject to section 161
4731.226 of the Revised Code, violating or attempting to violate, 162
directly or indirectly, or assisting in or abetting the violation 163
of, or conspiring to violate, any provisions of this chapter or 164
any rule promulgated by the board. 165

This division does not apply to a violation or attempted 166
violation of, assisting in or abetting the violation of, or a 167
conspiracy to violate, any provision of this chapter or any rule 168
adopted by the board that would preclude the making of a report by 169
a physician of an employee's use of a drug of abuse, or of a 170
condition of an employee other than one involving the use of a 171
drug of abuse, to the employer of the employee as described in 172
division (B) of section 2305.33 of the Revised Code. Nothing in 173
this division affects the immunity from civil liability conferred 174
by that section upon a physician who makes either type of report 175

in accordance with division (B) of that section. As used in this 176
division, "employee," "employer," and "physician" have the same 177
meanings as in section 2305.33 of the Revised Code. 178

(21) The violation of section 3701.79 of the Revised Code or 179
of any abortion rule adopted by the public health council pursuant 180
to section 3701.341 of the Revised Code; 181

(22) Any of the following actions taken by an agency 182
responsible for authorizing, certifying, or regulating an 183
individual to practice a health care occupation or provide health 184
care services in this state or another jurisdiction, for any 185
reason other than the nonpayment of fees: the limitation, 186
revocation, or suspension of an individual's license to practice; 187
acceptance of an individual's license surrender; denial of a 188
license; refusal to renew or reinstate a license; imposition of 189
probation; or issuance of an order of censure or other reprimand; 190

(23) The violation of section 2919.12 of the Revised Code or 191
the performance or inducement of an abortion upon a pregnant woman 192
with actual knowledge that the conditions specified in division 193
(B) of section 2317.56 of the Revised Code have not been satisfied 194
or with a heedless indifference as to whether those conditions 195
have been satisfied, unless an affirmative defense as specified in 196
division (H)(2) of that section would apply in a civil action 197
authorized by division (H)(1) of that section; 198

(24) The revocation, suspension, restriction, reduction, or 199
termination of clinical privileges by the United States department 200
of defense or department of veterans affairs or the termination or 201
suspension of a certificate of registration to prescribe drugs by 202
the drug enforcement administration of the United States 203
department of justice; 204

(25) Termination or suspension from participation in the 205
medicare or medicaid programs by the department of health and 206

human services or other responsible agency for any act or acts 207
that also would constitute a violation of division (B)(2), (3), 208
(6), (8), or (19) of this section; 209

(26) Impairment of ability to practice according to 210
acceptable and prevailing standards of care because of habitual or 211
excessive use or abuse of drugs, alcohol, or other substances that 212
impair ability to practice. 213

For the purposes of this division, any individual authorized 214
to practice by this chapter accepts the privilege of practicing in 215
this state subject to supervision by the board. By filing an 216
application for or holding a certificate to practice under this 217
chapter, an individual shall be deemed to have given consent to 218
submit to a mental or physical examination when ordered to do so 219
by the board in writing, and to have waived all objections to the 220
admissibility of testimony or examination reports that constitute 221
privileged communications. 222

If it has reason to believe that any individual authorized to 223
practice by this chapter or any applicant for certification to 224
practice suffers such impairment, the board may compel the 225
individual to submit to a mental or physical examination, or both. 226
The expense of the examination is the responsibility of the 227
individual compelled to be examined. Any mental or physical 228
examination required under this division shall be undertaken by a 229
treatment provider or physician who is qualified to conduct the 230
examination and who is chosen by the board. 231

Failure to submit to a mental or physical examination ordered 232
by the board constitutes an admission of the allegations against 233
the individual unless the failure is due to circumstances beyond 234
the individual's control, and a default and final order may be 235
entered without the taking of testimony or presentation of 236
evidence. If the board determines that the individual's ability to 237
practice is impaired, the board shall suspend the individual's 238

certificate or deny the individual's application and shall require 239
the individual, as a condition for initial, continued, reinstated, 240
or renewed certification to practice, to submit to treatment. 241

Before being eligible to apply for reinstatement of a 242
certificate suspended under this division, the impaired 243
practitioner shall demonstrate to the board the ability to resume 244
practice in compliance with acceptable and prevailing standards of 245
care under the provisions of the practitioner's certificate. The 246
demonstration shall include, but shall not be limited to, the 247
following: 248

(a) Certification from a treatment provider approved under 249
section 4731.25 of the Revised Code that the individual has 250
successfully completed any required inpatient treatment; 251

(b) Evidence of continuing full compliance with an aftercare 252
contract or consent agreement; 253

(c) Two written reports indicating that the individual's 254
ability to practice has been assessed and that the individual has 255
been found capable of practicing according to acceptable and 256
prevailing standards of care. The reports shall be made by 257
individuals or providers approved by the board for making the 258
assessments and shall describe the basis for their determination. 259

The board may reinstate a certificate suspended under this 260
division after that demonstration and after the individual has 261
entered into a written consent agreement. 262

When the impaired practitioner resumes practice, the board 263
shall require continued monitoring of the individual. The 264
monitoring shall include, but not be limited to, compliance with 265
the written consent agreement entered into before reinstatement or 266
with conditions imposed by board order after a hearing, and, upon 267
termination of the consent agreement, submission to the board for 268
at least two years of annual written progress reports made under 269

penalty of perjury stating whether the individual has maintained sobriety.	270 271
(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;	272 273
(28) Except as provided in division (N) of this section:	274
(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;	275 276 277 278 279 280
(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.	281 282 283 284 285
(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;	286 287 288
(30) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's file;	289 290 291 292 293
(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;	294 295 296 297
(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist,	298 299

certified nurse-midwife, or certified nurse practitioner with whom 300
the physician or podiatrist is in collaboration pursuant to 301
section 4731.27 of the Revised Code or failure to fulfill the 302
responsibilities of collaboration after entering into a standard 303
care arrangement; 304

(33) Failure to comply with the terms of a consult agreement 305
entered into with a pharmacist pursuant to section 4729.39 of the 306
Revised Code; 307

(34) Failure to cooperate in an investigation conducted by 308
the board under division (F) of this section, including failure to 309
comply with a subpoena or order issued by the board or failure to 310
answer truthfully a question presented by the board at a 311
deposition or in written interrogatories, except that failure to 312
cooperate with an investigation shall not constitute grounds for 313
discipline under this section if a court of competent jurisdiction 314
has issued an order that either quashes a subpoena or permits the 315
individual to withhold the testimony or evidence in issue; 316

(35) Failure to supervise an acupuncturist in accordance with 317
Chapter 4762. of the Revised Code and the board's rules for 318
supervision of an acupuncturist; 319

(36) Failure to supervise an anesthesiologist assistant in 320
accordance with Chapter 4760. of the Revised Code and the board's 321
rules for supervision of an anesthesiologist assistant; 322

(37) Assisting suicide as defined in section 3795.01 of the 323
Revised Code; 324

(38) Failure to comply with the requirements of section 325
2317.561 of the Revised Code; 326

(39) Failure to supervise a radiologist assistant in 327
accordance with Chapter 4774. of the Revised Code and the board's 328
rules for supervision of radiologist assistants; 329

(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;	330 331 332
(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;	333 334 335 336
(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;	337 338 339 340
(43) Failure to comply with the requirements of section 4729.79 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;	341 342 343 344
(41) (44) Failure to comply with the requirements of section 2919.171 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 of the Revised Code;	345 346 347 348
<u>(45) Failure to comply with the requirements of section 4731.45 of the Revised Code regarding prescriptions for drugs intended to treat symptoms of erectile dysfunction and courses of treatment for patients receiving prescriptions for those drugs.</u>	349 350 351 352
(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order	353 354 355 356 357 358 359 360

of the board with respect to the matter addressed in the 361
agreement. If the board refuses to ratify a consent agreement, the 362
admissions and findings contained in the consent agreement shall 363
be of no force or effect. 364

A telephone conference call may be utilized for ratification 365
of a consent agreement that revokes or suspends an individual's 366
certificate to practice. The telephone conference call shall be 367
considered a special meeting under division (F) of section 121.22 368
of the Revised Code. 369

If the board takes disciplinary action against an individual 370
under division (B) of this section for a second or subsequent plea 371
of guilty to, or judicial finding of guilt of, a violation of 372
section 2919.123 of the Revised Code, the disciplinary action 373
shall consist of a suspension of the individual's certificate to 374
practice for a period of at least one year or, if determined 375
appropriate by the board, a more serious sanction involving the 376
individual's certificate to practice. Any consent agreement 377
entered into under this division with an individual that pertains 378
to a second or subsequent plea of guilty to, or judicial finding 379
of guilt of, a violation of that section shall provide for a 380
suspension of the individual's certificate to practice for a 381
period of at least one year or, if determined appropriate by the 382
board, a more serious sanction involving the individual's 383
certificate to practice. 384

(D) For purposes of divisions (B)(10), (12), and (14) of this 385
section, the commission of the act may be established by a finding 386
by the board, pursuant to an adjudication under Chapter 119. of 387
the Revised Code, that the individual committed the act. The board 388
does not have jurisdiction under those divisions if the trial 389
court renders a final judgment in the individual's favor and that 390
judgment is based upon an adjudication on the merits. The board 391
has jurisdiction under those divisions if the trial court issues 392

an order of dismissal upon technical or procedural grounds. 393

(E) The sealing of conviction records by any court shall have 394
no effect upon a prior board order entered under this section or 395
upon the board's jurisdiction to take action under this section 396
if, based upon a plea of guilty, a judicial finding of guilt, or a 397
judicial finding of eligibility for intervention in lieu of 398
conviction, the board issued a notice of opportunity for a hearing 399
prior to the court's order to seal the records. The board shall 400
not be required to seal, destroy, redact, or otherwise modify its 401
records to reflect the court's sealing of conviction records. 402

(F)(1) The board shall investigate evidence that appears to 403
show that a person has violated any provision of this chapter or 404
any rule adopted under it. Any person may report to the board in a 405
signed writing any information that the person may have that 406
appears to show a violation of any provision of this chapter or 407
any rule adopted under it. In the absence of bad faith, any person 408
who reports information of that nature or who testifies before the 409
board in any adjudication conducted under Chapter 119. of the 410
Revised Code shall not be liable in damages in a civil action as a 411
result of the report or testimony. Each complaint or allegation of 412
a violation received by the board shall be assigned a case number 413
and shall be recorded by the board. 414

(2) Investigations of alleged violations of this chapter or 415
any rule adopted under it shall be supervised by the supervising 416
member elected by the board in accordance with section 4731.02 of 417
the Revised Code and by the secretary as provided in section 418
4731.39 of the Revised Code. The president may designate another 419
member of the board to supervise the investigation in place of the 420
supervising member. No member of the board who supervises the 421
investigation of a case shall participate in further adjudication 422
of the case. 423

(3) In investigating a possible violation of this chapter or 424

any rule adopted under this chapter, the board may administer 425
oaths, order the taking of depositions, inspect and copy any 426
books, accounts, papers, records, or documents, issue subpoenas, 427
and compel the attendance of witnesses and production of books, 428
accounts, papers, records, documents, and testimony, except that a 429
subpoena for patient record information shall not be issued 430
without consultation with the attorney general's office and 431
approval of the secretary and supervising member of the board. 432
Before issuance of a subpoena for patient record information, the 433
secretary and supervising member shall determine whether there is 434
probable cause to believe that the complaint filed alleges a 435
violation of this chapter or any rule adopted under it and that 436
the records sought are relevant to the alleged violation and 437
material to the investigation. The subpoena may apply only to 438
records that cover a reasonable period of time surrounding the 439
alleged violation. 440

On failure to comply with any subpoena issued by the board 441
and after reasonable notice to the person being subpoenaed, the 442
board may move for an order compelling the production of persons 443
or records pursuant to the Rules of Civil Procedure. 444

A subpoena issued by the board may be served by a sheriff, 445
the sheriff's deputy, or a board employee designated by the board. 446
Service of a subpoena issued by the board may be made by 447
delivering a copy of the subpoena to the person named therein, 448
reading it to the person, or leaving it at the person's usual 449
place of residence. When the person being served is a person whose 450
practice is authorized by this chapter, service of the subpoena 451
may be made by certified mail, restricted delivery, return receipt 452
requested, and the subpoena shall be deemed served on the date 453
delivery is made or the date the person refuses to accept 454
delivery. 455

A sheriff's deputy who serves a subpoena shall receive the 456

same fees as a sheriff. Each witness who appears before the board 457
in obedience to a subpoena shall receive the fees and mileage 458
provided for under section 119.094 of the Revised Code. 459

(4) All hearings and investigations of the board shall be 460
considered civil actions for the purposes of section 2305.252 of 461
the Revised Code. 462

(5) Information received by the board pursuant to an 463
investigation is confidential and not subject to discovery in any 464
civil action. 465

The board shall conduct all investigations and proceedings in 466
a manner that protects the confidentiality of patients and persons 467
who file complaints with the board. The board shall not make 468
public the names or any other identifying information about 469
patients or complainants unless proper consent is given or, in the 470
case of a patient, a waiver of the patient privilege exists under 471
division (B) of section 2317.02 of the Revised Code, except that 472
consent or a waiver of that nature is not required if the board 473
possesses reliable and substantial evidence that no bona fide 474
physician-patient relationship exists. 475

The board may share any information it receives pursuant to 476
an investigation, including patient records and patient record 477
information, with law enforcement agencies, other licensing 478
boards, and other governmental agencies that are prosecuting, 479
adjudicating, or investigating alleged violations of statutes or 480
administrative rules. An agency or board that receives the 481
information shall comply with the same requirements regarding 482
confidentiality as those with which the state medical board must 483
comply, notwithstanding any conflicting provision of the Revised 484
Code or procedure of the agency or board that applies when it is 485
dealing with other information in its possession. In a judicial 486
proceeding, the information may be admitted into evidence only in 487
accordance with the Rules of Evidence, but the court shall require 488

that appropriate measures are taken to ensure that confidentiality 489
is maintained with respect to any part of the information that 490
contains names or other identifying information about patients or 491
complainants whose confidentiality was protected by the state 492
medical board when the information was in the board's possession. 493
Measures to ensure confidentiality that may be taken by the court 494
include sealing its records or deleting specific information from 495
its records. 496

(6) On a quarterly basis, the board shall prepare a report 497
that documents the disposition of all cases during the preceding 498
three months. The report shall contain the following information 499
for each case with which the board has completed its activities: 500

(a) The case number assigned to the complaint or alleged 501
violation; 502

(b) The type of certificate to practice, if any, held by the 503
individual against whom the complaint is directed; 504

(c) A description of the allegations contained in the 505
complaint; 506

(d) The disposition of the case. 507

The report shall state how many cases are still pending and 508
shall be prepared in a manner that protects the identity of each 509
person involved in each case. The report shall be a public record 510
under section 149.43 of the Revised Code. 511

(G) If the secretary and supervising member determine both of 512
the following, they may recommend that the board suspend an 513
individual's certificate to practice without a prior hearing: 514

(1) That there is clear and convincing evidence that an 515
individual has violated division (B) of this section; 516

(2) That the individual's continued practice presents a 517
danger of immediate and serious harm to the public. 518

Written allegations shall be prepared for consideration by 519
the board. The board, upon review of those allegations and by an 520
affirmative vote of not fewer than six of its members, excluding 521
the secretary and supervising member, may suspend a certificate 522
without a prior hearing. A telephone conference call may be 523
utilized for reviewing the allegations and taking the vote on the 524
summary suspension. 525

The board shall issue a written order of suspension by 526
certified mail or in person in accordance with section 119.07 of 527
the Revised Code. The order shall not be subject to suspension by 528
the court during pendency of any appeal filed under section 119.12 529
of the Revised Code. If the individual subject to the summary 530
suspension requests an adjudicatory hearing by the board, the date 531
set for the hearing shall be within fifteen days, but not earlier 532
than seven days, after the individual requests the hearing, unless 533
otherwise agreed to by both the board and the individual. 534

Any summary suspension imposed under this division shall 535
remain in effect, unless reversed on appeal, until a final 536
adjudicative order issued by the board pursuant to this section 537
and Chapter 119. of the Revised Code becomes effective. The board 538
shall issue its final adjudicative order within seventy-five days 539
after completion of its hearing. A failure to issue the order 540
within seventy-five days shall result in dissolution of the 541
summary suspension order but shall not invalidate any subsequent, 542
final adjudicative order. 543

(H) If the board takes action under division (B)(9), (11), or 544
(13) of this section and the judicial finding of guilt, guilty 545
plea, or judicial finding of eligibility for intervention in lieu 546
of conviction is overturned on appeal, upon exhaustion of the 547
criminal appeal, a petition for reconsideration of the order may 548
be filed with the board along with appropriate court documents. 549
Upon receipt of a petition of that nature and supporting court 550

documents, the board shall reinstate the individual's certificate 551
to practice. The board may then hold an adjudication under Chapter 552
119. of the Revised Code to determine whether the individual 553
committed the act in question. Notice of an opportunity for a 554
hearing shall be given in accordance with Chapter 119. of the 555
Revised Code. If the board finds, pursuant to an adjudication held 556
under this division, that the individual committed the act or if 557
no hearing is requested, the board may order any of the sanctions 558
identified under division (B) of this section. 559

(I) The certificate to practice issued to an individual under 560
this chapter and the individual's practice in this state are 561
automatically suspended as of the date of the individual's second 562
or subsequent plea of guilty to, or judicial finding of guilt of, 563
a violation of section 2919.123 of the Revised Code, or the date 564
the individual pleads guilty to, is found by a judge or jury to be 565
guilty of, or is subject to a judicial finding of eligibility for 566
intervention in lieu of conviction in this state or treatment or 567
intervention in lieu of conviction in another jurisdiction for any 568
of the following criminal offenses in this state or a 569
substantially equivalent criminal offense in another jurisdiction: 570
aggravated murder, murder, voluntary manslaughter, felonious 571
assault, kidnapping, rape, sexual battery, gross sexual 572
imposition, aggravated arson, aggravated robbery, or aggravated 573
burglary. Continued practice after suspension shall be considered 574
practicing without a certificate. 575

The board shall notify the individual subject to the 576
suspension by certified mail or in person in accordance with 577
section 119.07 of the Revised Code. If an individual whose 578
certificate is automatically suspended under this division fails 579
to make a timely request for an adjudication under Chapter 119. of 580
the Revised Code, the board shall do whichever of the following is 581
applicable: 582

(1) If the automatic suspension under this division is for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the board shall enter an order suspending the individual's certificate to practice for a period of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's certificate to practice.

(2) In all circumstances in which division (I)(1) of this section does not apply, enter a final order permanently revoking the individual's certificate to practice.

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

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent

action taken by the board is forever thereafter ineligible to hold 615
a certificate to practice and the board shall not accept an 616
application for reinstatement of the certificate or for issuance 617
of a new certificate. 618

(M) Notwithstanding any other provision of the Revised Code, 619
all of the following apply: 620

(1) The surrender of a certificate issued under this chapter 621
shall not be effective unless or until accepted by the board. A 622
telephone conference call may be utilized for acceptance of the 623
surrender of an individual's certificate to practice. The 624
telephone conference call shall be considered a special meeting 625
under division (F) of section 121.22 of the Revised Code. 626
Reinstatement of a certificate surrendered to the board requires 627
an affirmative vote of not fewer than six members of the board. 628

(2) An application for a certificate made under the 629
provisions of this chapter may not be withdrawn without approval 630
of the board. 631

(3) Failure by an individual to renew a certificate of 632
registration in accordance with this chapter shall not remove or 633
limit the board's jurisdiction to take any disciplinary action 634
under this section against the individual. 635

(N) Sanctions shall not be imposed under division (B)(28) of 636
this section against any person who waives deductibles and 637
copayments as follows: 638

(1) In compliance with the health benefit plan that expressly 639
allows such a practice. Waiver of the deductibles or copayments 640
shall be made only with the full knowledge and consent of the plan 641
purchaser, payer, and third-party administrator. Documentation of 642
the consent shall be made available to the board upon request. 643

(2) For professional services rendered to any other person 644
authorized to practice pursuant to this chapter, to the extent 645

allowed by this chapter and rules adopted by the board. 646

(O) Under the board's investigative duties described in this 647
section and subject to division (F) of this section, the board 648
shall develop and implement a quality intervention program 649
designed to improve through remedial education the clinical and 650
communication skills of individuals authorized under this chapter 651
to practice medicine and surgery, osteopathic medicine and 652
surgery, and podiatric medicine and surgery. In developing and 653
implementing the quality intervention program, the board may do 654
all of the following: 655

(1) Offer in appropriate cases as determined by the board an 656
educational and assessment program pursuant to an investigation 657
the board conducts under this section; 658

(2) Select providers of educational and assessment services, 659
including a quality intervention program panel of case reviewers; 660

(3) Make referrals to educational and assessment service 661
providers and approve individual educational programs recommended 662
by those providers. The board shall monitor the progress of each 663
individual undertaking a recommended individual educational 664
program. 665

(4) Determine what constitutes successful completion of an 666
individual educational program and require further monitoring of 667
the individual who completed the program or other action that the 668
board determines to be appropriate; 669

(5) Adopt rules in accordance with Chapter 119. of the 670
Revised Code to further implement the quality intervention 671
program. 672

An individual who participates in an individual educational 673
program pursuant to this division shall pay the financial 674
obligations arising from that educational program. 675

Sec. 4731.45. (A) As used in this section, "physician" means 676
an individual authorized under this chapter to practice medicine 677
and surgery or osteopathic medicine and surgery. 678

(B) No person other than a physician shall issue to a patient 679
a prescription for a drug intended to treat symptoms of erectile 680
dysfunction. 681

(C) All of the following conditions must be met before a 682
physician may issue to a patient an initial prescription for a 683
drug intended to treat symptoms of erectile dysfunction: 684

(1) The physician shall obtain from the patient a notarized 685
affidavit in which at least one of the patient's sexual partners 686
certifies that the patient has experienced symptoms of erectile 687
dysfunction in the ninety days preceding the date on the 688
affidavit. 689

(2) The physician shall refer the patient to a sexual 690
therapist approved by the state medical board for an assessment of 691
the possible causes of the patient's symptoms of erectile 692
dysfunction and request that the therapist provide to the 693
physician a written report of the therapist's conclusions from the 694
assessment. If the sexual therapist concludes that the patient's 695
symptoms are attributable solely to one or more psychological 696
conditions, the therapist shall specify in the report that the 697
patient has a psychosexual disorder, as that term is defined in 698
the most recent edition of the diagnostic and statistical manual 699
of mental disorders published by the American psychiatric 700
association, and the physician shall not give further 701
consideration to prescribing the drug for the patient. 702

(3) The physician shall require the patient to undergo a 703
cardiac stress test and request that written results of the test 704
be provided to the physician. The physician shall not give further 705
consideration to prescribing the drug for the patient unless the 706

results of the test confirm that the patient's cardiac health is 707
compatible with sexual activity. 708

(4) The physician shall perform a prostate examination on the 709
patient. The physician shall not give further consideration to 710
prescribing the drug for the patient unless the physician 711
concludes from the examination that the patient's prostate health 712
is compatible with sexual activity. 713

(5) After all of the conditions of divisions (C)(1) to (4) of 714
this section have been met and the physician determines that 715
prescribing the drug is medically appropriate for the patient, the 716
physician shall notify the patient in writing of the potential 717
risks and complications associated with taking drugs intended to 718
treat symptoms of erectile dysfunction. The physician shall not 719
proceed with prescribing the drug for the patient unless the 720
patient provides to the physician a form containing the patient's 721
signature and a statement acknowledging that the patient received 722
the notice from the physician and understood the information that 723
was provided. 724

(6) If the form described in division (C)(5) of this section 725
is received from the patient, the physician shall declare in 726
writing, under penalty of perjury, that the drug the physician 727
intends to prescribe is necessary to treat the patient's symptoms 728
of erectile dysfunction and attach to the declaration a statement 729
that clearly describes the physician's rationale for issuing the 730
prescription based on a verified medical condition. 731

(7) After making the declaration described in division (C)(6) 732
of this section, the physician shall notify the patient that the 733
prescription may be issued. The physician shall not issue the 734
prescription sooner than thirty-six hours after the physician 735
provides the notice to the patient. 736

(D)(1) To ensure the continued health of a patient to whom a 737

prescription for a drug intended to treat symptoms of erectile dysfunction has been issued, a physician shall do both of the following as part of the physician's course of treatment for the patient, including treatment rendered by issuing to that patient a prescription authorizing one or more refills for the drug originally prescribed or a prescription for another drug intended to treat symptoms of erectile dysfunction: 738
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(a) Require the patient to undergo a cardiac stress test every ninety days while the patient is taking the drug to ensure that the patient's cardiac health continues to be compatible with sexual activity; 745
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(b) Require the patient to attend three sessions of outpatient counseling within the period ending six months after the drug is initially prescribed for purposes of ensuring the patient's understanding of the dangerous side effects of drugs intended to treat the symptoms of erectile dysfunction. 749
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(2) The physician shall ensure that the sessions attended by the patient pursuant to division (D)(1)(b) of this section include information on nonpharmaceutical treatments for erectile dysfunction, including sexual counseling and resources for patients to pursue celibacy as a viable lifestyle choice. 754
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(E) Each document prepared or received by a physician under divisions (C) and (D) of this section, including any report received from a sexual therapist under division (C)(2) of this section specifying that a patient has a psychosexual disorder, shall be retained by the physician in the patient's medical records for not less than seven years after the document is prepared or received. 759
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Section 2. That existing section 4731.22 of the Revised Code is hereby repealed. 766
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Section 3. Section 4731.22 of the Revised Code is presented 768
in this act as a composite of the section as amended by both H.B. 769
78 and Am. Sub. H.B. 93 of the 129th General Assembly. The General 770
Assembly, applying the principle stated in division (B) of section 771
1.52 of the Revised Code that amendments are to be harmonized if 772
reasonably capable of simultaneous operation, finds that the 773
composite is the resulting version of the section in effect prior 774
to the effective date of the section as presented in this act. 775