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Current Rule 4731-11-09, Ohio Administrative Code, requires a physician to have personally physically examined a patient before prescribing any drug to the patient --- except in specific situations. The rule also applies to physician assistants who have prescriptive authority.

In 2016, the legislature enacted Section 4731.74, Ohio Revised Code, which requires the Medical Board to adopt rules governing the requirements for a physician to prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician. The rule is required to be adopted not later than March 23, 2017. The rule will also be applicable to physician assistants who have prescriptive authority.

To that end, the Medical Board proposes to rescind current Rule 4731-11-09 and replace it with a new rule that complies with the following requirements in Section 4731.74, Ohio Revised Code:

- ✓ Regarding prescription drugs that are not controlled substances, the rules shall authorize a physician to establish a physician-patient relationship by the use of appropriate technology that permits, in a manner that is consistent with the minimal standard of care for in-person care by a physician, a medical evaluation and the collection of relevant clinical history as needed to establish a diagnosis, identify any underlying conditions, and identify any contraindications to the treatment that is recommended or provided.
- ✓ Regarding prescription drugs that are controlled substances, the rules shall establish standards that are consistent with federal law.

In addition, Rule 4731-11-01, Ohio Administrative Code, is proposed to be amended to add definitions of terms that are used in draft replacement rule 4731-11-09.

Proposed amended Rule 4731-11-01, proposed replacement Rule 4731-11-09, and current Rule 4731-11-09 are attached to this memo. The Medical Board is accepting comments on the proposed actions through **Thursday, May 12, 2016**.

Please send any comments to: [Sallie.Debolt@med.ohio.gov](mailto:Sallie.Debolt@med.ohio.gov)

\*\*\* DRAFT - NOT YET FILED \*\*\*

4731-11-09

**Prescribing to persons not seen by the physician TO BE RESCINDED.**

(A) Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, situations involving nurses practicing in accordance with standard care arrangements, and hospice settings, as described in paragraphs (D) and (E) of this rule, a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any controlled substance to a person who the physician has never personally physically examined and diagnosed.

(B) Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, situations involving nurses practicing in accordance with standard care arrangements, and hospice settings, as described in paragraphs (D) and (E) of this rule, a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any dangerous drug which is not a controlled substance to a person who the physician has never personally physically examined and diagnosed, except in accordance with one of the following requirements:

(1) The physician is providing care in compliance with both of the following:

(a) The care provided is in consultation with another physician who:

(i) Has an ongoing professional relationship with the patient; and

(ii) Has agreed to supervise the patient's use of the drug or drugs to be provided.

(b) The care provided meets all applicable standards of care and all applicable statutory and regulatory requirements.

(2) The psychiatrist is providing telepsychiatry to one patient per session who is located at the Ohio office of an Ohio licensed physician or a community mental health clinic certified by the Ohio department of mental health, and all of the following requirements are met:

(a) The psychiatrist has reviewed records from a physical examination of the patient that was conducted by a physician licensed under Chapter 4731. of the Revised Code within a reasonable period of time prior to the telepsychiatry visit;

(b) A licensed healthcare professional is available during the telepsychiatry visit to provide various physical findings in accordance with the

licensed healthcare professional's scope of practice that the psychiatrist may need to complete an adequate assessment;

(c) The psychiatrist agrees to do both of the following:

(i) Be available to consult with another physician who has an ongoing professional relationship with the patient; and

(ii) Supervise the patient's use of the drug or drugs provided;

(d) The psychiatrist's care of the patient meets all applicable standards of care and all applicable statutory and regulatory requirements.

(C) A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule.

(D) Paragraphs (A) and (B) of this rule do not apply to or prohibit the provision of drugs to a person who is admitted as an inpatient to or is a resident of an institutional facility. For purposes of this rule, "institutional facility" has the same meaning as in rule 4729-17-01 of the Administrative Code. This paragraph does not authorize or legitimize practices that would violate other applicable standards or legal requirements.

(E) Paragraphs (A) and (B) of this rule do not apply to or prohibit:

(1) The provision of controlled substances or dangerous drugs by a physician to a person who is a patient of a colleague of the physician, if the drugs are provided pursuant to an on call or cross coverage arrangement between the physicians;

(2) The provision of controlled substances or dangerous drugs by a physician to a person who the physician has accepted as a patient, if the physician has scheduled or is in the process of scheduling an appointment to examine the patient and the drugs are intended to be used pending that appointment;

(3) The provision of controlled substances or dangerous drugs by emergency medical squad personnel, nurses, or other appropriately trained and licensed individuals, in accordance with protocols approved by the state board of pharmacy pursuant to rule 4729-5-01 of the Administrative Code; or

- (4) The provision of controlled substances or dangerous drugs by a nurse practicing in accordance with a standard care arrangement that meets the requirements of Chapter 4723. of the Revised Code and rules promulgated by the board of nursing pursuant thereto.
- (5) The provision of controlled substances or dangerous drugs by a physician who is a medical director or hospice physician of a hospice program licensed pursuant to Chapter 3712. of the Revised Code, to a patient who is enrolled in that hospice program.

This paragraph does not authorize or legitimize practices that would violate other applicable standards or legal requirements.

(F) For purposes of this rule, "controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(G) For purposes of this rule, "dangerous drug" has the same meaning as in section 4729.01 of the Revised Code.

(H) A violation of any provision of this rule, as determined by the board, shall constitute "failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; and "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," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(I) For purposes of this rule:

(1) "Licensed healthcare professional" means any of the following:

- (a) An individual licensed under Chapter 4731. of the Revised Code to practice allopathic medicine and surgery or osteopathic medicine and surgery;
- (b) A physician assistant licensed under Chapter 4730. of the Revised Code who is practicing in compliance with all applicable statutory and rule requirements; and

- (c) A nurse licensed under Chapter 4723. of the Revised Code who is practicing in compliance with all applicable statutory and rule requirements.
  
- (2) "Psychiatrist" means an individual licensed under Chapter 4731. of the Revised Code to practice allopathic medicine and surgery or osteopathic medicine and surgery who has successfully completed an approved psychiatry training program, as specified in the accreditation requirements that must be met to qualify as graduate medical education under section 4731.091 of the Revised Code.
  
- (3) "Telepsychiatry" means the provision of psychiatric care via real-time, adequate resolution audio and video telecommunications when all of the following requirements are met:
  - (a) Videoconferencing picture resolution, at a minimum, shall have a data rate of 30 frames per second (fps), with each frame containing 288 lines and 352 pixels per line.
  
  - (b) Systems shall have a minimum of 384 kilobytes per second (Kbps) of bandwidth, and the provider site shall have the capacity to zoom and to follow the patient at the remote site.

**4731-11-09 Prescribing to persons not seen by the physician**

- (A) Except as provided in paragraph (D) of this rule, a physician shall not prescribe, dispense, otherwise provide, or cause to be provided, any controlled substance to a person on whom the physician has never conducted a physical examination.
- (B) Except as provided in paragraphs (C) of this rule, a physician shall not prescribe, dispense, otherwise provide, or cause to be provided, any prescription drug that is not a controlled substance to a person on whom the physician has never conducted a physical examination.
- (C) A physician may prescribe, dispense, otherwise provide, or cause to be provided a prescription drug that is not a controlled substance to a person on whom a physician has never conducted a physical examination and who is at a location remote from the physician when the physician complies with all of the requirements of this paragraph.
  - (1) The physician shall establish the patient's identity and physical location;
  - (2) The physician shall obtain the patient's informed consent for treatment through a remote examination;
  - (3) The physician shall obtain the patient's consent to forward the medical record to the patient's primary care provider or other healthcare provider, if applicable or to refer the patient to an appropriate health care provider or health care facility;
  - (4) The physician shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care;
  - (5) The physician shall establish a diagnosis and treatment plan, which includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment.
  - (6) The physician shall document in the patient's medical record the history, evaluation, diagnosis, treatment plan, underlying conditions, any contraindications and any referrals to appropriate health care providers, including primary care providers or health care facilities;
  - (7) The physician shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider or health care facility in accordance with minimal standards of care;
  - (8) The physician shall make the medical record of the visit available to the patient;
  - (9) The physician shall use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in-person visit.
- (D) A physician may prescribe, dispense or otherwise provide, or cause to be provided a prescription drug that is a controlled substance, to a person on whom the physician has not conducted a physical examination and who is at a location remote from the physician so long as the physician meets all steps in paragraph (C) and one of the following situations exists:
  - (1) The person is an active patient, as that term is defined in paragraph (D) of rule 4731-11-01 of the Administrative Code, of a health care provider who is a colleague of the physician and the drugs are provided pursuant to an on call or cross coverage arrangement between the health care providers;

(2) The physician is engaged in the practice of telemedicine as that term is defined in 21 C.F.R. 1300.04, in effect as of March 23, 2017.

(3) The person has been admitted as an inpatient to or is a resident of an institutional facility. For purposes of this rule, "institutional facility" has the same meaning as in rule 4729-17-01 of the Administrative Code.

(E) Nothing in this rule shall be construed to imply that one in-person physician examination demonstrates that a prescription has been issued for a legitimate medical purpose within the course of professional practice.

(F) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) "Failure to maintain minimal standards applicable to the selection or administration of drugs, " as that clause is used in division (B)(2) of the section 4731.22 of the Revised Code;

(2) "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or

(3) "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," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(G) For purposes of this rule, "informed consent" means a process of communication between a patient and physician discussing the risks and benefits of, and alternatives to, treatment through a remote examination that results in the patient's signed authorization or agreement to be treated through an examination conducted through appropriate technology when the physician is in a location remote from the patient.