

4731-19-01 **Definitions.**

As used in this chapter of the Administrative Code:

- (A) "The board" means the state medical board of Ohio.
- (B) "ODH" means the Ohio department of health.
- (C) "HIV" means the human immunodeficiency virus.
- (D) "HBV" means the hepatitis B virus with hepatitis E-antigen positive status.
- (E) "Licensee" means any person holding or practicing pursuant to a certificate issued by the board under Chapter 4730., 4731., 4760., 4762., or 4774. of the Revised Code.
- (F) "Invasive procedure" means any of the following:
 - (1) Any surgical or procedural entry into tissues, cavities, or organs or repair of major traumatic injuries associated with any of the following: an operating or delivery room, emergency department, or outpatient setting, including physicians' offices; cardiac catheterization and angiographic procedures; a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or the manipulation, cutting, or removal of any oral or premolar tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.
 - (2) Any entry into the hair follicle using an electric modality for the purpose of hair removal;
 - (3) The practice of acupuncture as defined in section 4762.01 of the Revised Code; or
 - (4) The performance of fluoroscopic procedures pursuant to section 4774.08 of the Revised Code.
- (G) "Exposure-prone invasive procedures" means an invasive procedure in which there is a significant risk of contact between the blood or body fluids of the licensee and the blood or body fluids of the patient.
 - (1) Some characteristics of exposure prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the licensee's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site.
 - (2) An invasive procedure is exposure prone if it presents a recognized risk of percutaneous injury to the licensee, and, in the event such an injury occurs, the licensee's blood is likely to contact the patient's body cavity, subcutaneous tissues or mucous membranes.

Promulgated Under: 119.03

Statutory Authority: 4730.07, 4731.05, 4760.19, 4762.19, 4774.11

Rule Amplifies: 4730.25, 4731.051, 4731.22, 4731.224, 4760.13,
4762.13, 4774.13

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4731-19-05 **Duty to refrain from certain procedures.**

- (A) A licensee who knows he or she is infected with HIV or HBV shall not perform or participate in an exposure-prone invasive procedure, as that term is defined in paragraph (G) of rule 4731-19-01 of the Administrative Code, until the infected licensee has obtained counsel from the ODH review panel or from an institutional review panel approved by ODH and then, only under the circumstances that the counseling panel decides are appropriate. Such circumstances shall include notifying prospective patients of the licensee's seropositivity before they undergo any exposure-prone invasive procedures identified as such by the infected licensee's ODH review panel or institutional review panel approved by the ODH, and adherence to all guidelines published by the centers for disease control, and the United States department of health and human services.
- (B) A licensee who has reason to suspect that he or she may be infected with HIV or HBV shall obtain appropriate testing to reveal the licensee's HIV status and HBV status before the licensee performs or participates in an exposure-prone invasive procedure.
- (C) A licensee who knows or should suspect that he or she is infected with HIV or HBV shall practice recommended surgical technique and shall adhere to universal precautions, as delineated in Chapter 4731-17 of the Administrative Code, when performing invasive procedures other than exposure-prone invasive procedures.
- (D) A violation of any provision of this rule shall also constitute "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)(19) of section 4730.25, division (B)(6) of section 4731.22, division (B)(4) of section 4760.13, division (A)(4) of section 4762.13, and division (B)(4) of section 4774.13 of the Revised Code.

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4731-19-06 **Board procedures.**

The following procedures shall be followed if the board receives information suggesting that a licensee is infected with HIV or HBV:

- (A) The board shall record a complaint and investigate to determine whether the licensee is infected with HIV or HBV; whether the licensee is likely to perform or participate in an invasive procedure; and whether there is evidence that the licensee has violated any provision of section 4730.25, 4731.22, 4760.13, 4762.13, or 4774.13 of the Revised Code.
- (B) If investigation confirms that the licensee is one who performs invasive procedures and is infected with HIV or HBV but produces insufficient evidence which would support formal discipline based on violations of section 4730.25, 4731.22, 4760.13, 4762.13, or 4774.13 of the Revised Code or any rule of the board, the board will refer the licensee to ODH for evaluation and monitoring as provided in paragraph (B) of rule 4731-19-02 of the Administrative Code.
 - (1) If the licensee who performs invasive procedures fails to verify to the board his or her compliance with the requirements of the monitoring program established by the ODH review panel or institutional review panel approved by ODH, the board will enter the licensee into its confidential monitoring program as provided in rule 4731-19-07 of the Administrative Code.
 - (2) The board will refrain from initiating disciplinary proceedings so long as the licensee complies with the requirements of the confidential monitoring program and so long as the board does not have evidence which support charges of violations of section 4730.25, 4731.22, 4760.13, 4762.13, or 4774.13 of the Revised Code.
- (C) If investigation produces evidence which would support formal discipline and additionally confirms that the licensee is infected with HIV or HBV, the board shall initiate formal disciplinary proceedings based on the alleged violations of law, and may also enter the licensee into the confidential monitoring program. The board will treat all information relating to the licensee's infection with HIV or HBV as confidential, and will divulge the information only to the extent necessary to prove its allegations in the disciplinary proceedings.
- (D) A licensee who has been entered into the confidential monitoring program who fails to comply with the requirements of the program will be subject to discipline for violations of division (B)(20) of section 4731.22, division (B)(3) of section 4730.25, division (B)(3) of section 4760.13, division (B)(3) of section 4762.13, or division (B)(3) of section 4774.13 of the Revised Code, as applicable to the licensee.

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Statutory Authority: 4730.07, 4731.05, 4760.19, 4762.19, 4774.11

Rule Amplifies: 4730.25, 4731.051, 4731.22, 4731.224, 4760.13, 4762.13, 4774.13

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