

4731-28-02**Eligibility for confidential monitoring program.**

There is hereby created a confidential monitoring program applicable to all individuals licensed under Chapter 4730., 4731., 4759., 4760., 4761., 4762., 4774., or 4778. of the Revised Code who are determined to be eligible for the program pursuant to this rule. For purposes of the confidential monitoring program, the term "confidentiality statute" refers to division (F) of section 4730.26 of the Revised Code, division (F)(5) of section 4731.22 of the Revised Code, division (B)(5) of section 4759.05 of the Revised Code, division (E) of section 4760.14 of the Revised Code, division (E) of section 4761.03 of the Revised Code, division (E) of section 4762.14 of the Revised Code, division (E) of section 4774.14 of the Revised Code, or division (E) of section 4778.18 of the Revised Code, as applicable to the individual.

(A) Under the board's investigative duties pursuant to sections 4730.26, 4731.22, 4759.05, 4760.14, 4761.03, 4762.14, 4774. 14, or 4778.18 of the Revised Code, as applicable to the individual, and subject to the applicable confidentiality statute, the secretary and supervising member of the board may determine that an individual who is the subject of an investigation by the board concerning a mental or physical illness, other than a substance use disorder or chemical abuse/dependency, is appropriate for ongoing investigative observation and monitoring rather than formal disciplinary action. Upon such determination, the board may conduct such observation and monitoring through the individual's participation in a confidential monitoring program overseen by the secretary and supervising member of the board under the board's investigative duties and subject to the applicable confidentiality statute.

(B) In making their determination of an individual's eligibility for participation in the confidential monitoring program, the secretary and supervising member of the board shall use the following criteria:

(1) The board may conduct any investigation necessary to evaluate the totality of circumstances, including requiring the individual to submit to a physical or mental examination under the applicable chapter of the Revised Code;

(2) The individual must provide continuing authorization, through appropriate written consent forms, for the disclosure and release of information between the board, the individual, and any other persons or entities involved in the evaluation, treatment, or monitoring of the individual that is necessary for them to fulfill their respective duties and obligations. This includes, but is not limited to, the exchange of information to and from employers, probation officers, law enforcement agencies, peer assistance programs, health care practitioners, mental health counsellors, social workers, or any other individuals or entities the board determines may have relevant information.

- (3) If the individual has not yet undertaken appropriate treatment, monitoring, or supervision related to the mental or physical condition, the information received must demonstrate that the individual is willing to commence such appropriate treatment, monitoring, or supervision;
- (4) If the individual has commenced treatment for the mental or physical illness, the information received must demonstrate that the individual has been significantly compliant with the treatment plan established, including taking all medications as prescribed;
- (5) If the individual was previously a participant in the monitoring program, the individual must have demonstrated full compliance with all program requirements. Any individual who was previously disqualified from participation in the monitoring program shall be ineligible for future participation in the program;
- (6) If the individual was previously the subject of formal public disciplinary action by this board, such action must have been based solely on a violation of division (B)(4) of section 4730.25 of the Revised Code, division (B)(19) of section 4731.22 of the Revised Code, division (A)(14) of section 4759.07 of the Revised Code, division (B)(5) of section 4760.13 of the Revised Code, division (A)(14) of section 4761.09 of the Revised Code, division (B)(5) of section 4762.13 of the Revised Code, division (B)(5) of section 4774.13 of the Revised Code, or division (B)(5) of section 4778.14 of the Revised Code, as applicable to the individual, for which the individual subsequently was released from probation without restriction. Any individual who has been issued a notice of opportunity for hearing that remains pending for final adjudication by the board is not eligible for participation in the monitoring program regardless of the basis of the violation alleged in the notice;
- (7) If the individual was previously the subject of confidential monitoring, public monitoring, non-disciplinary monitoring, or formal disciplinary action by or in association with an agency responsible for authorizing, certifying, or regulating the individual to practice a health care occupation in this state or any other jurisdiction, such action must have been based solely on the individual's mental or physical illness;
- (8) No information available to the board about the individual, either concerning past or current allegations or conduct, implicates a possible sexual boundary issue regardless of whether such issue involved patients or non-patients and regardless of whether such issue was caused by or related to the individual's mental or physical illness;

- (9) No information available to the board about the individual, either concerning past or current allegations or conduct, implicates an act of violence against property or persons or threat of violence against property or persons, even if the board is unable to conclusively confirm the credibility of such allegations;
- (10) No information available to the board about the individual, either concerning past or current allegations or conduct, and regardless of whether caused by or related to the individual's mental or physical illness:
- (a) Demonstrates that the individual has been convicted of a felony or misdemeanor, including but not limited to operating a vehicle under the influence or reckless operation, at any time;
 - (b) Indicates that the individual has felony or misdemeanor charges, including but not limited to operating a vehicle under the influence or reckless operation, currently pending; and/or
 - (c) Implicates a possible criminal issue, regardless of whether formal misdemeanor or felony charges were pursued or are anticipated in the future;
- (11) There is no information indicating that the individual is in violation of any provision of the chapter of the Revised Code under which the individual was licensed other than division (B)(4) of section 4730.25 of the Revised Code, division (B)(19) of section 4731.22 of the Revised Code, division (A)(14) of section 4759.07 of the Revised Code, division (B)(5) of section 4760.13 of the Revised Code, division (A)(14) of section 4761.09 of the Revised Code, division (B)(5) of section 4762.13 of the Revised Code, division (B)(5) of section 4774.13 of the Revised Code, or division (B)(5) of section 4778.14 of the Revised Code, as applicable to the individual; and
- (12) There is no information indicating that allowing the individual to participate in confidential monitoring will create a significant risk of potential harm to patients.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

4778.12, 4774.11, 4762.19, 4760.19, 4731.05,
4730.07, 4759.05, 4761.03

Rule Amplifies:

4730.26, 4778.18, 4774.14, 4760.14, 4731.22,
4759.05, 4761.03, 4762.14