

4723-27-09

Disciplinary actions against certified medication aides; investigations.

- (A) The board, by a vote of a quorum, may revoke or may refuse to grant a medication aide certificate to a person found by the board to have committed fraud in passing an examination required to obtain the certificate or to have committed fraud, misrepresentation, or deception in applying for or securing a medication aide certificate issued by the board.
- (B) The board, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any medication aide certificate issued by the board; reprimand or otherwise discipline a holder of a medication aide certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:
- (1) Denial, revocation, suspension, or restriction of authority to practice a health care occupation, in Ohio or another state or jurisdiction, including but not limited to nursing, practice as a dialysis technician, nurse aide, community health care worker or medication aide, for any reason other than a failure to renew;
 - (2) Administering medications as a certified medication aide, having failed to renew a medication aide certificate issued under this chapter, or while a medication aide certificate is under suspension or inactive;
 - (3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, of a misdemeanor committed in the course of practice;
 - (4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, any felony or of any crime involving gross immorality or moral turpitude;
 - (5) Selling, giving away, or administering drugs or therapeutic devices for other than legal and legitimate therapeutic purposes; or conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, violating any municipal, state, county, or federal drug law;
 - (6) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

- (7) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no 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 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 the ability to comply with standards of safe medication administration established in rule 4723-27-02 of the Administrative Code;
- (10) Impairment of the ability to comply with standards of safe medication administration established in rule 4723-27-02 of the Administrative Code 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 comply with standards of safe medication administration established in rule 4723-27-02 of the Administrative Code because of a physical or mental disability;
- (12) Assaulting or causing harm to a resident or depriving a resident 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 medication aide 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 States for any act that violates or would violate this chapter;
- (16) Violation of Chapter 4723. of the Revised Code or any rules adopted under it;
- (17) Violation of any restrictions placed on a medication aide certificate by the board;
- (18) Failure to use infection control and standard precautions including those set forth in chapter 4723-20 of the Administrative Code;

- (19) Engaging in activities that exceed those permitted under sections 4723.61 to 4723.69 of the Revised Code or this chapter;
- (20) Failure by a certified medication aide to conform to the standards of safe medication administration established in rule 4723-27-02 of the Administrative Code.
- (21) Aiding and abetting a person in that person's practice of nursing without a license, or practice as a dialysis technician or certified medication aide without a certificate issued under this chapter;
- (22) Regardless of whether the contact or verbal behavior is consensual, engaging with a resident other than the spouse of the certified medication aide in any of the following:

 - (a) Sexual contact, as defined in section 2907.01 of the Revised Code;
 - (b) Verbal behavior that is sexually demeaning to the resident or may be reasonably interpreted by the resident as sexually demeaning.
- (23) Assisting suicide as defined in section 2795.01 of the Revised Code.
- (C) The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code and Chapter 4723-16 of the Administrative Code. The board may appoint a hearing examiner, as provided in section 119.09 of the Revised Code, to conduct any hearing the board is authorized to hold under Chapter 119. of the Revised Code.
- (D) 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 certificate holder does not make a timely request for a hearing in accordance with section 119.07 of the Revised Code:

 - (1) 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; and
 - (2) In the final order, the board may order any of the sanctions listed in paragraphs (A) or (B) of this rule.
- (E) If a criminal action is brought against a certified medication aide for an act or crime described in paragraphs (B)(3) to (B)(7) of this rule and the action is dismissed by the trial court other than on the merits:

 - (1) The board shall conduct an adjudication to determine whether the certified medication aide committed the act upon which the action was based.

- (2) If the board determines on the basis of the adjudication that the certified medication aide committed the act, or if the certified medication aide fails to participate in the adjudication, the board may take action as though the certified medication aide had been convicted of the act.
- (F) If the board takes action on the basis of a conviction, plea, or a judicial finding as described in paragraphs (B)(3) to (B)(7) of this rule that is overturned on appeal, the certified medication aide may, on exhaustion of the appeal process, petition the board for reconsideration of its action.
- (1) On receipt of the petition and supporting court documents, the board shall temporarily rescind its action.
- (2) If the board determines that the decision on appeal was a decision on the merits, it shall permanently rescind its action.
- (3) 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 certified medication aide committed the act on which the original conviction, plea, or judicial finding was based.
- (a) If the board determines on the basis of the adjudication that the certified medication aide committed such act, or if the certified medication aide does not request an adjudication, the board shall reinstate its action;
- (b) If the board determines that the certified medication aide did not commit such act, the board shall permanently rescind its action.
- (G) The board may investigate an individual's criminal background in performing its duties under this rule and sections 4723.61 through 4723.69 of the Revised Code.
- (H) During the course of an investigation authorized the board may compel any certified medication aide or applicant under sections 4723.61 to 4723.69 of the Revised Code 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 safely administer prescribed medication. Failure of any individual to submit to a mental or physical 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.
- (I) If the board finds that an individual is impaired in accordance with paragraph (H) of this rule, 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 certificate to administer prescribed medication.

- (1) The individual shall be afforded an opportunity to demonstrate to the board that the individual can begin or resume the administration of prescribed medication in accordance with the standards established under rule 4723-27-02 of the Administrative Code.
- (2) For purposes of this paragraph, any certified medication aide or applicant under this rule 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.
- (J) The provisions of division (I) of section 4723.28 of the Revised Code apply to information, investigations and adjudications involving certified medication aides or applicants under sections 4723.61 to 4723.69 of the Revised Code and this chapter.
- (K) The provisions of section 4723.29 of the Revised Code apply with respect to any matter that the board has authority to investigate, inquire into, or hear under sections 4723.61 to 4723.69 of the Revised Code and this chapter.
- (L) When the board refuses to grant a medication aide certificate to an applicant, revokes a certificate, or refuses to reinstate a 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 medication aide certificate and the board shall not accept from the individual an application for reinstatement of the certificate or for a new certificate.
- (M) No unilateral surrender of a medication aide certificate issued under Chapter 4723. of the Revised Code shall be effective unless accepted by majority vote of the board. No application for a medication aide certificate issued under Chapter 4723. of the Revised Code may be withdrawn without a majority vote of the board. The board's jurisdiction to take disciplinary action is not removed or limited when an individual has a certificate classified as inactive or fails to renew a certificate.

Effective: 02/01/2006

CERTIFIED ELECTRONICALLY

Certification

02/01/2006

Date

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Rule Amplifies: 4723.61 to 4723.68