

Rule Summary and Fiscal Analysis (Part A)**State Medical Board**

Agency Name

Division

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4731-11-09

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Prescribing to persons not seen by the physician.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB188**General Assembly: **131**Sponsor: **Manning,
Huffman**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **4731.05; 4731.74**5. Statute(s) the rule, as filed, amplifies or implements: **4731.22; 4731.74**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Section 4731.74 of the Revised Code, effective March 23, 2016, requires the Medical Board to promulgate rules setting the requirements for physicians to prescribe prescription drugs to persons the physician has not personally examined and who is at a location remote from the physician. The current rule is inconsistent with the specifications of Section 4731.74.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule reflects the requirements of Section 4731.74 of the Revised Code. For providing drugs that are not denoted as controlled substances by the U.S. Drug Enforcement Administration, the rule allow for the establishment of a physician-patient relationship by the use of appropriate technology. For providing drugs that are controlled substances, the rules are consistent with federal law.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

The rule references provisions of the Ohio Revised Code and Ohio Administrative Code that are readily available via an internet search, the Medical Board's website, and the public library.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

The rule is revised in Paragraph (D) to reflect comments received at the public hearing and after from hospice and long term care/nursing home interested parties. Long term care facilities and nursing homes are included within the definition of "institutional facility" in Rule 4729-17-01, OAC. Because of the unique needs of the patients in hospice and institutional facility situations, paragraph (D)(5) and (6)

were added to allow the prescribing of controlled substances to patients not previously examined by hospice/long term care associated physicians when the prescription is transmitted to the pharmacy by a means that is compliant with the rules of the Ohio Board of Pharmacy. This limited provision recognizes the unique needs of these specific patient populations while still being consistent with the requirement in the federal Controlled Substances Act, as amended by the Ryan Haight Act, which provides that except for certain specific situations the physician must have personally examined the patient before prescribing a controlled substance when the prescription is transmitted via a means facilitated by the internet.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

None

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The regulation balances patient convenience with patient safety. The cost of compliance cannot be quantified in terms of dollars, hours to comply, or other factors. The cost will depend upon the technology chosen to maintain patient records, to interact with the patient, and to examine the patient and other factors that are specific to the medical practice of each telemedicine provider.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Medical Board licensees who violate the rule are subject to licensure discipline, up to and including license revocation. The Medical Board may also impose a civil penalty pursuant to Section 4731.225 of the Revised Code of up to twenty thousand dollars for violation of the rule.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**