

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

Agency Name

Division

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**4731-11-09**

Rule Number

**RESCISSION**

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)? **Yes**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB188**General Assembly: **131**Sponsor: **Representatives  
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:

Revised Code Section 4731.74 requires the Medical Board to promulgate rules setting requirements for a Medical Board licensee who wishes to provide prescription drugs to patients whom the licensee has not physically examined in person and who is remote from the physician. For prescribing drugs that are not denoted as controlled substances by the U.S. Drug Enforcement Administration, the

rules must allow for the establishment of a physician-patient relationship by the use of appropriate technology. For prescribing controlled substances, the rules must be consistent with federal law.

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:

Current Rule 4731-11-09 sets standards for a physician's prescribing of or otherwise providing drugs to patients for whom the physician has not established a physician-patient relationship by the performance of an in-person physical examination in a manner that is not consistent with Section 4731.74 of the Revised Code.

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 the 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 was put into TBR status to provide time for the Medical Board to consider comments received on the proposed new rule. Now that the proposed new rule is being re-filed, the proposal to rescind the current rule can be re-filed as well.

12. Five Year Review (FYR) Date: **11/2/2016**

(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

Not applicable.

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 current rule does not require a physician to incur expenditures. However, physicians and medical practices argue that it prevents them from competing against telemedicine practices.

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 license discipline, up to and including license revocation.

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