

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Termination of Physician-Patient Relationship

Rule Number(s): 4731-27-01, 4731-27-02, and 4731-27-03

Date: August 3, 2018

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in Chapter 4731-27, Ohio Administrative Code, notify physicians, patients, and medical administrators about the requirements for a physician to appropriately terminate a physician-patient relationship.

4731-27-01: Definitions. This chapter defines terms used in the other two rules in the chapter.

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4731-27-02: Dismissing a patient from a medical practice.

- The Medical Board receives complaints from patients who were dismissed from a medical practice and, therefore, allege that the physician has committed patient abandonment. Accordingly, this rule notifies patients, physicians, and medical administrators about the standards that should be met in order to dismiss a patient in a manner not constituting patient abandonment. The rule is proposed to be amended at paragraph (A)(1)(b) to clarify that a patient who has been disruptive or threatening may be dismissed immediately instead of the physician having to provide emergency services for up to thirty days.

4731-27-03: Notice of termination of physician employment or physician leaving a practice, selling a practice, or retiring from practice.

- Patients have complained that they made an appointment with their physician only to find when they arrived for the appointment that their physician was no longer at the medical practice. This rule sets the standards for notifying patients when a physician is leaving a practice for any reason. Paragraphs (A) and (B) implement Section 4731.228 of the Revised Code for a physician employed by a health care entity. Paragraph (C) sets the standards for a physician who is an independent contractor, is an employee or owner of a medical practice that does not constitute a “health care entity” under Section 4731.228 of the Revised Code.
- The rule is amended at paragraph (C) to clarify that the requirements cover a physician who is employed by or has an ownership interest in a medical practice that does not constitute a health care entity under Section 4731.228 of the Revised Code.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The rules are authorized by Sections 4731.05 and 4731.228 of the Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No, the rules do not implement a federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Proposed rule 4731-27-02 is needed in order to clarify for physicians and patients the requirements a physician must take when dismissing a patient from a medical practice. The

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Ohio Revised Code does not explicitly cover dismissing a patient from the practice. However, Section 4731.22(B)(18), O.R.C., designates the codes of ethics of the American Medical Association, American Osteopathic Association, and American Podiatric Medical Association as the code of ethics of M.D.s, D.O.s, and D.P.Ms, respectively. Each of the national code of ethics differs as to the patient notice requirements. Therefore, the Ohio rule is needed to set a common standard for all three types of physicians licensed by the Medical Board.

Proposed rule 4731-27-03 performs two services as relates to notice to patients that a physician is leaving a medical practice location. First, paragraphs (A) and (B) are required by Section 2 of Sub. H.B. 417 of the 129th General Assembly, codified at Section 4731.228 of the Revised Code. Second, paragraph (C) is needed in order to establish a uniform expectation for how notice is given to patients when an independent contractor physician or physician with an ownership interest leaves a medical practice for whatever reason. The Medical Board has received complaints alleging patient abandonment because the physician left the medical practice without the information being sent to patients.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success of the regulation will be measured by having only a limited number of complaints from patients alleging that the physician abandoned the patient by failing to notify the patient that he/she was dismissed from the practice or that the physician is leaving a medical practice, with no complaints resulting in disciplinary action against the physician.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Notice of the review of the rules and proposed amendments was sent on May 11, 2018, to interested parties, including: state physician associations, medical societies, attorneys representing respondents in administrative licensure matters before the Medical Board, and organizations and individuals who have requested notice of Medical Board rules activities. The recipients included, but are not limited to, the following: Academy of Medicine of Cincinnati, Ohio State Medical Association, Ohio Osteopathic Association, Ohio Hospital Association, Academy of Medicine of Cleveland and Northern Ohio, Ohio State University Medical School, Ohio Academy of Family Physicians, and the Ohio Dermatology Association.

No comments were received.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

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Although no comments were received in response to the May notice discussed in Number 7, above, the amendments reflect input from medical practices and attorneys since the rules were last reviewed. Specifically, the amendment to paragraph (A)(1)(b) of Rule 4731-27-02 results from numerous calls asking for clarification of the notice requirement in situations where a patient has been threatening or abusive to the physician, other patients in the medical office waiting room, and/or medical office staff. The amendment at paragraph (C) of Rule 4731-27-03 results from questions raised by private attorneys as to the rule's applicability to certain practice entities.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data was not used to develop the rule. However, the codes of ethics of the national medical associations designated by Section 4731.22(B)(18), O.R.C., as the code of ethics for Ohio physicians were used. Also, the requirements of Section 4731.228, effective March 22, 2013, served as a basis for establishing requirements for physicians whose practice as an independent contractor or part owner/owner of a health care entity is ending.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Medical Board did not consider any alternative regulations. The rules are proposed to be amended to reflect comments and questions received since the rules were last promulgated. There were no comments received from interested parties concerning the proposed rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Proposed rule 4731-27-02 is performance based in that it allows the physician to choose the option by which the dismissal notice is sent to the patient.

Proposed rule 4731-27-03 is also a performance-based regulation. Paragraph (A) provides options for means of sending the notice required by Section 4731.228, O.R.C. Both option (A)(1) and (A)(2) allow the health care entity to determine how best to meet the requirements of the option. For example, if the health care entity chooses to send a letter via regular mail under option (A)(1), the date of mailing of the letter may be documented in a manner that best fits with the business practices of the entity. Should the health care entity provide the patient names and addresses to the physician, as is provided in Section 4731.228, ORC, the physician has the same options. The same options are also available under Paragraph (C) of the rule for physicians who are leaving a practice after having provided medical services as an independent contractor or physician with an ownership interest in the practice.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

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The Medical Board is the only agency with authority to promulgate these rules. Moreover, Section 2 of Sub. H.B. 417 of the 129th General Assembly specifically directed the Medical Board to amend its then Rule 4731-27-01 to reflect the provisions of Section 4731.228, O.R.C.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The first step in implementing the regulation is informing the impacted parties. The Medical Board will widely circulate the final rules by posting the information on its website and newsletter sent via e-mail to all licensees for which the Medical Board has an e-mail address and by providing them to the Ohio Hospital Association, all state medical associations, and local medical associations. The medical associations are composed of physicians who are employees, independent contractors, and owners of health care entities. The final rules will also be distributed to attorneys who represent physicians in administrative actions before the Medical Board and to all persons on the e-mail distribution list for notice of Medical Board rules activities.

The Medical Board does not have authority to enforce Paragraph (A) of proposed rule 4731-27-03. See Section 4731.228, Ohio Revised Code. However, the Medical Board will monitor the enforcement of the other provisions of the proposed rules for consistent application.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The business community impacted includes entities through which physician medical services are provided and all physicians. Proposed rule 4731-27-02 applies to all physicians not specifically exempted. Paragraph (A) of proposed rule 4731-27-03 applies to all health care entities as that term is defined in Division (A)(1) of Section 4731.228, Ohio Revised Code. It is defined to mean any of the following that employs a physician: hospital registered with the Ohio Department of Health, general corporation, nonprofit corporation, limited liability company, health insuring corporation, partnership, or professional association. Paragraph (B) of proposed rule 4731-27-03 applies to physicians who were formerly employed by a health care entity. Paragraph (C) of proposed rule 4731-27-03 applies to physicians who practice as independent contractors and physicians who have an ownership interest in a health care entity or medical practice.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

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The adverse impact is the cost of preparing and sending notice to all patients seen by the physician within the two years preceding the end of the physician's employment or the last date on which the physician will see patients. The adverse impact to the health care entity or medical practice may also include the loss of patients who choose to follow the physician who is no longer practicing at the health care entity or medical practice. Individual physicians may also be adversely impacted by the cost of preparing and sending notices under proposed rule 4731-27-02 and Paragraphs (B) and (C) in proposed rule 4731-27-03.

Individual physicians who fail to comply with the rules are subject to Medical Board administrative disciplinary action, including a possible fine. The Medical Board does not have authority to enforce the provisions of paragraph (A) of rule 4731-27-03.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The actual cost of compliance will be determined by the investments in staff and materials designated to prepare and send the notices. Costs can be contained by creating a standard notice.

The cost of sending the notice required in the proposed rules will vary depending on the manner by which it is sent. The cost of sending the notice by certified mail, an option in proposed rule 4731-27-02, is currently \$3.45 per letter, plus staff time. <https://www.certifiedmaillabels.com/usps-postal-rates>. However, most physicians only infrequently dismiss a patient from the practice.

For proposed rule 4731-27-03, sending a letter by regular mail to 2,000 patients at the current first class rate would cost \$1,000.00 in postage plus staff time. <https://www.stamps.com/usps/postage-rate-increase/>.

For both rules, sending the message via an electronic system would cost only staff time.

A physician who fails to comply with rule 4731-27-02 or paragraphs (B) or (C) of rule 4731-27-03 is subject to disciplinary action, including the possibility of a fine of up to \$20,000.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The purpose behind the regulation of health professionals in Ohio is to protect the health and safety of Ohio citizens. One means of accomplishing this goal is to facilitate the ability of patients to establish a physician-patient relationship with a physician they trust. It is generally accepted in medicine that once a physician-patient relationship is established, the physician is obligated to provide medical services as long as the patient needs them. See <https://www.ama-assn.org/delivering-care/terminating-patient-physician-relationship>.

However, the physician -patient relationship may be ended by either party. A physician may no longer wish to treat a specific patient for reasons that might include that the patient is noncompliant with treatment or is abusive to the physician and/or staff. Compliance with proposed rule 4731-27-02 will provide appropriate notice to the patient that he/she must seek another physician, while at the same time protecting the physician from an allegation of having abandoned the patient during the course of treatment for a medical condition. An allegation of patient abandonment may lead to administrative disciplinary action by the Medical Board against the physician's license.

Proposed rule 4731-27-03 addresses the situation arising when a physician's employment is ended, his/her contract expires or is cancelled, or he/she leaves a medical practice in which he/she has an ownership interest. It protects the patients by providing them notice of how to obtain their medical records should they choose to seek another physician or follow the physician leaving. Under current Rule 4731-27-01, O.A.C, a physician whose employment ends is often denied the ability to notify patients where he/she will be practicing in the future because the employer will not provide the physician with a listing of the names and addresses of patients the physician has seen. If the employer sends a letter, it is frequently drafted to state the physician is no longer practicing there but the patient will continue to be cared for by the other physicians at the entity or practice.

Physicians and medical associations lobbied for the enactment of Section 4731.228, Ohio Revised Code, because it requires that, among other things, the notice include the address where the physician will be, if known, and other key information. They argued that even if the physician is required to send out the notice himself/herself, the cost of doing so will be outweighed by the physician's ability to craft a notice explaining why the physician is no longer at that health care entity or medical practice, and by having the names and addresses of patients through which the physician will be able to recruit patients.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

All businesses are treated the same. The aim of the rules is to protect the citizens of Ohio through basic procedures for notification.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The rules do not require paperwork to be submitted to the Medical Board. It is important all violations of the rule be uniformly enforced based upon the specifics of the infraction.

18. What resources are available to assist small businesses with compliance of the regulation?

Medical Board staff is available to assist health care entities, medical practices, and physicians with compliance and to provide information to patients.