



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: State Medical Board of Ohio

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Impaired Practitioners

Rule Number(s): 4731-16-02, 4731-16-05, 4731-16-08

Date of Submission for CSI Review: 9/24/21

Public Comment Period End Date: 10/8/21

Rule Type/Number of Rules:

New/___ rules

Amended/___3___ rules (FYR? _yes_)

No Change/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Rule 4731-16-02 sets forth the general procedures in impairment cases. The amendments add licensees under Chapters 4759, 4761, 4774 and 4778 to the rule and delete reference to cosmetic therapists who are no longer licensed by the Medical Board with the passage of HB 442 in the 133rd General Assembly. The amendments allow intensive outpatient treatment for dietitians, respiratory care professionals, radiologist assistants and genetic counselors in addition to massage therapists. The amendments replace the term “certificate” with “license”.

Rule 16-05 sets forth requirements for examinations for practitioners impaired in their ability to practice due to use of alcohol or drugs. The amendments add licensees under Chapters 4759, 4761, 4774 and 4778 to the rule. The amendments revise the requirements for examination to include hair testing; updates terminology for the tools used in the examination, including a biopsychosocial assessment, and adds dietitians, respiratory care

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professionals, radiologist assistants and genetic counselors to license types who may utilize an outpatient examination. The amendments remove reference to cosmetic therapists.

Rule 4731-16-08 sets forth the criteria for approval for treatment providers for Medical Board licensees. The amendments add licensees under Chapters 4759, 4761, 4774 and 4778 to the rule. The amendments allow outpatient treatment for dietitians, respiratory care professionals, radiologist assistants, and genetic counselors and delete reference to cosmetic therapist. The amendments also correct a typographical error regarding the Commission on Accreditation of Rehabilitation Facilities.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authorized by: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12

Amplifies: 4730.25, 4730.32, 4731.22, 4731.224, 4731.25, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14

4. 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.

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

Not applicable.

6. 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)?

The rules provide detail regarding the evaluations to determine if Medical Board licensees and applicants are impaired in their ability to practice due to use or abuse of alcohol or drugs and sets forth the requirements for required treatment for practitioners found to be impaired in their ability to practice.

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

Success of the regulations is met if the Medical Board licensees and treatment providers have a clear understanding of the examination and treatment requirements for practitioners found to be impaired in their ability to practice due to use or abuse of alcohol or drugs.

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- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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.

The rules were developed with guidance from the Board's Compliance Committee with input from the Ohio Physician's Health Program, the monitoring organization for the Medical Board's One-Bite program for impaired practitioners. The rules were circulated to interested parties on June 17, 2021. Comments were due on July 2, 2021 and none were received.

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

The Medical Board's Compliance Committee and the Ohio Physician's Health Program provided input regarding the rule amendments, including the particular tools to be utilized in the examinations under Rule 4731-16-05, and the license types who may satisfy rule requirements with an out-patient examination and intensive outpatient treatment.

- 11. 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?**

The comments from the Compliance Committee and the Ohio Physician's Health Program included comments from physicians who treat substance use disorder.

- 12. 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?**

No regulatory alternatives were proposed.

- 13. 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.***

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The rules provide detail regarding the requirements for examinations and treatment provided to Medical Board licensees found to be impaired in their ability to practice. Having consistent examination and treatment requirements is necessary in order to ensure patient safety.

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

The Medical Board is the only entity charged with promulgating rules regarding the examination and treatment of Medical Board licensees found to be impaired due to use or abuse of alcohol or drugs.

15. 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 Medical Board will implement the amendments to the rules by providing notice to the approved treatment providers, Ohio Physician's Health Program and licensees.

Adverse Impact to Business

16. 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; and

The impacted business community includes all licensees and applicants of the Medical Board and the treatment providers authorized to evaluate and treat Medical Board licensees and applicants who may be impaired in their ability to practice due to use or abuse of alcohol or drugs.

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

Failure to comply with the requirements of the rules could result in discipline and civil penalties imposed by the Medical Board.

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.

Licensees ordered to examinations or treatment under these rules are responsible for payment to the approved treatment providers. The intent of the amendment is to allow certain license types (dietitians, respiratory care professionals, radiologist assistants and genetic counselors) to satisfy the rule requirements with an outpatient examination and intensive

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outpatient treatment which costs less than the 72 hour evaluation and 28-days of residential or inpatient treatment currently required for those license types.

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

Ensuring consistent standards for the examination and treatment of Medical Board licensees and applicants who are impaired in their ability to practice due to use or abuse of alcohol or drugs is necessary for patient safety and justifies the adverse impact to the affected individuals.

Regulatory Flexibility

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

No, the regulations are consistently applied for all licensees and applicants.

19. 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 Medical Board does not allow for waiver of fines and penalties, but consistently applies the rules to all licensees and applicants.

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

The Medical Board provides information regarding its rules to all licensees and applicants on the website and maintains an e-mail inbox for individuals and entities to ask questions about the Board's laws, rules and policies.

4731-16-02

General procedures in impairment cases.

- (A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, [division \(A\)\(18\) of section 4759.07 of the Revised Code](#), division (B)(6) of section 4760.13 of the Revised Code, [division \(A\)\(18\) of section 4761.09 of the Revised Code](#), ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, [division \(B\)\(6\) of section 4774.13 of the Revised Code](#), or [division \(B\)\(6\) of 4778.14 of the Revised Code](#), it may compel the individual to submit to a mental or physical examination, or both.
- (1) Such examinations shall be undertaken by an approved treatment provider designated by the board.
 - (2) The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired.
 - (3) Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.
- (B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, [division \(A\)\(18\) of section 4759.07 of the Revised Code](#), division (B)(6) of section 4760.13 of the Revised Code, [division \(A\)\(18\) of section 4761.09 of the Revised Code](#), ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, [division \(B\)\(6\) of section 4774.13 of the Revised Code](#), or [division \(B\)\(6\) of section 4778.14 of the Revised Code](#), the following general pattern of action shall be followed:
- (1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must meet all requirements of rule 4731-16-05 of the Administrative Code.
 - (a) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, [division \(A\)\(18\) of section 4759.07 of the Revised Code](#), division (B)(6) of section 4760.13 of the Revised Code, ~~or~~ [division \(A\)\(18\) of section 4761.09 of the Revised Code](#), division (B)(6) of section 4762.13 of the Revised Code, [division \(B\)\(6\) of section 4774.13 of the Revised Code](#), or [division \(B\)\(6\) of section 4778.14 of the Revised Code](#) unless

other investigation produces reliable, substantial, and probative evidence demonstrating impairment.

- (b) If the examination or examinations disclose impairment, or if the board has other reliable, substantial and probative evidence demonstrating impairment, the board shall initiate proceedings to suspend the license or deny the applicant. The board may issue an order of summary suspension as provided in division (G) of section 4730.25 of the Revised Code, division (G) of section 4731.22 of the Revised Code, division (G) of section 4759.07 of the Revised Code, division (G) of section 4760.13 of the Revised Code, ~~or~~ division (G) of section 4761.09 of the Revised Code, division (G) of section 4762.13 of the Revised Code, division (G) of section 4774.13 of the Revised Code, or division (G) of section 4778.14 of the Revised Code.
- (2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:
 - (a) The individual has relapsed during or following treatment;
 - (b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program;
 - (c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance.
- (3) Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's license~~certificate~~. Such demonstrations shall include but shall not be limited to the following:
 - (a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed all required treatment, as follows:
 - (i) Except as provided in paragraph (B)(3)(a)(ii) of this rule, the required treatment shall include inpatient or residential treatment

that extends a minimum of twenty-eight days with the following exception: If the individual has previously completed an inpatient or residential treatment program of at least twenty-eight days and maintained sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.

- (ii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who does not meet the criteria set forth in paragraph (B)(3)(a)(iii) of this rule, the required treatment shall include intensive outpatient treatment meeting the requirements of paragraph (A)(13) of rule 4731-16-08 of the Administrative Code. The required intensive outpatient treatment must include a minimum of twenty treatment sessions over no less than five consecutive weeks with the following exception: If the massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ has previously completed an intensive outpatient treatment program of at least twenty treatment sessions over no less than five consecutive weeks and has maintained sobriety for at least one year following completion of that intensive outpatient treatment, the treatment required shall be determined by the treatment provider.
 - (iii) If the impaired individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who was investigated by the board for possible impairment as part of a previous application for or while holding any license ~~certificate~~ issued by the board other than a license ~~certificate~~ to practice massage therapy, dietetics, respiratory care, as a radiologist assistant, or as a genetic counselor ~~or cosmetic therapy~~, the required treatment shall be in compliance with paragraph (B)(3)(a)(i) of this rule.
- (b) Evidence of continuing full compliance with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and with any consent agreement or order of the board then in effect;
 - (c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board

for making such assessments and shall describe the basis for this determination. A physician who is the medical director of a treatment provider approved under section 4731.25 of the Revised Code and this chapter of the Administrative Code may perform such an assessment without prior board approval.

- (4) Subject to the provisions of paragraph (D) of this rule, the board may reinstate a license suspended under this paragraph after the demonstration described in paragraph (B)(3) of this rule and after the individual has entered into a written consent agreement which conforms to the requirements set forth in rule 4731-16-06 of the Administrative Code, or after the board has issued a final order in lieu of a consent agreement.
- (5) When the impaired individual resumes practice after license reinstatement, the board shall require continued monitoring of the individual. This monitoring shall include but not be limited to compliance with the written consent agreement entered into before reinstatement or compliance with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission by the individual to the board, for at least two years, of annual written progress reports made under penalty of perjury stating whether the license holder has maintained sobriety.
- (C) In cases where the board has initiated a disciplinary action for violations of any provisions of Chapter 4731., Chapter 4730., [Chapter 4759.](#), Chapter 4760., [Chapter 4761.](#), ~~or~~ Chapter 4762., [Chapter 4774.](#), or [Chapter 4778.](#) of the Revised Code or any of its rules in addition to division (B)(5) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, [division \(A\)\(18\) of section 4759.07 or the Revised Code](#), division (B)(6) of section 4760.13 of the Revised Code, [division \(A\)\(18\) of section 4761.09 of the Revised Code](#), ~~or~~ division (B)(6) of section 4762.13 of the Revised Code, [division \(B\)\(6\) of section 4774.13, or division \(B\)\(6\) of section 4778.14 of the Revised Code](#), the general pattern of action described in paragraph (B) of this rule will be followed with the following exceptions:
- (1) If the board permanently revokes a license, the individual shall not be eligible for further consideration for licensure or license reinstatement;
- (2) If the board imposes a period of ineligibility for licensure, the individual shall not be eligible for licensure or license reinstatement until the period of ineligibility has lapsed;
- (3) If the board imposes an indefinite period of ineligibility, licensure or license

reinstatement shall depend upon successful completion of the requirements in paragraphs (B)(3) and (B)(4) of this rule and determination by the board that the period of suspension or ineligibility served is commensurate with the violations found.

(D) Except as provided in this paragraph, an individual who has relapsed during or following treatment shall be ineligible to apply for reinstatement for at least ninety days following the date of license suspension for a first relapse, for at least one year following the date of license suspension for a second relapse, and for at least three years following the date of license suspension for a third relapse. An individual who suffers a relapse, as that term is defined in paragraph (B) of rule 4731-16-01 of the Administrative Code, will not be subjected to suspension or other board discipline based on that relapse if all of the following conditions are met:

- (1) The relapse was the first ever suffered by the individual;
- (2) The relapse occurred under circumstances that the board finds minimized the probability that the individual would either provide patient care while under influence of alcohol or drugs or leave patients without necessary care while under the influence of alcohol or drugs;
- (3) The relapse involved a single occasion of use for less than one day;
- (4) The individual self-reported the relapse within forty-eight hours in accordance with rule 4731-15-01 of the Administrative Code;
- (5) The individual does not thereafter suffer another relapse;
- (6) The board does not obtain evidence of acts, conduct or omissions that would support the imposition of discipline, apart from the relapse itself;
- (7) The relapse does not lead to the individual being charged with any criminal offense;
- (8) The individual reported the relapse to an approved treatment provider within forty-eight hours, submitted to evaluation as requested by the approved treatment provider, and obtained any additional treatment recommended;
- (9) The individual suspended practice until the approved treatment provider reported in writing to the board that it had made a clear determination that the individual was capable of practicing according to acceptable and prevailing

standards of care; and

- (10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are not circumstances warranting the initiation of disciplinary action.

4731-16-05

Examinations.

(A) Any examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, ~~or~~ division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code in order to determine impairment, or any examination of an applicant for or a holder of a certificate issued under Chapter 4730., Chapter 4731., Chapter 4759., Chapter 4760. Chapter 4761., ~~or~~ Chapter 4762., Chapter 4774., or Chapter 4778. of the Revised Code performed by an approved treatment provider shall include all of the following:

(1) Urine, hair screening or blood toxicology ~~alcohol~~ testing, or any combination ~~both~~, with legal chain of custody and forensic capability protocol;

(2) Comprehensive evaluation pertinent to the reasons for referral, including:

(a) Complete medical history and physical examination;

(b) Routine laboratory tests, to include complete blood count and liver function studies;

~~(b)(c)~~ Psychiatric evaluation, except as in paragraph (A)(3)(b)(ii); and mental status examination;

~~(e)(d)~~ Comprehensive biopsychosocial assessment; chemical use history; and

(e) Corroborating interviews of at least two persons who are close to the individual;

(f) Administration of at least two clinically approved substance use disorder assessment tools; and

(3) One of the following assessment standards, as applicable:

(a) Except as provided in paragraph (A)(3)(b) of this rule, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.

- (b) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who does not meet the criteria set forth in paragraph (A)(3)(c) of this rule:
- (i) ~~In-depth Outpatient~~ assessment that meets the requirements of (A)(1) and (2), ~~including use of a structured interview, by a physician, registered nurse or nurse practitioner who has specialized training in addiction medicine or treatment of addiction, or by a licensed independent chemical dependency counselor or licensed chemical dependency counselor III;~~
 - ~~(ii) Routine laboratory tests, to include complete blood count and liver function studies;~~
 - ~~(iii) Corroborating interviews of at least two persons who are close to the individual;~~
 - ~~(iv) Administration of the "Beck Depression Inventory" and the "Hamilton Anxiety Survey;" and~~
 - ~~(v)~~ (ii) Any other requirements as identified by the board or treatment provider. Psychiatric evaluation is not required in an examination administered under this paragraph unless the need for such an evaluation is identified by the board of the treatment provider.
- (c) If the individual is a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who was investigated by the board for possible impairment as part of a previous application for or while holding any certificate issued by the board, observation of the individual in an inpatient setting for at least seventy-two consecutive hours, unless the approved treatment provider diagnoses the individual as chemically dependent and formulates a treatment plan in a shorter time period.
- (B) A diagnosis made by an approved treatment provider based on an examination ordered by the board under division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (F) of section 4759.07 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code, division (F) of section 4761.09 of the Revised Code, ~~or~~ division (F)(2) of section 4762.13 of the Revised Code, division (F)(2) of section 4774.13 of the Revised Code, or division (F)(2) of section 4778.14 of the Revised Code shall be made solely for the purpose of providing evidence for use by the board. A licensee

or applicant who undergoes an examination ordered by the board but who refuses to authorize the treatment provider to release reports or information to the board shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence as provided in division (F)(2) of section 4730.25 of the Revised Code, division (B)(26) of section 4731.22 of the Revised Code, [division \(F\) of section 4759.07 of the Revised Code](#), division (F)(2) of section 4760.13 of the Revised Code, ~~or~~ [division \(F\) of section 4761.09 of the Revised Code](#), division (F)(2) of section 4762.13 of the Revised Code, [division \(F\)\(2\) of section 4774.13 of the Revised Code](#), or [division \(F\)\(2\) of section 4778.14 of the Revised Code](#).

- (C) The report issued pursuant to an examination ordered by the board shall be submitted to the board within five days following completion of the examination.
- (D) The board may require the certificate holder or applicant to submit to a drug toxicology screen at the time it serves its order to submit to an examination or at any time after it issues the examination order and before the examination is completed.
 - (1) The drug toxicology screen shall be considered part of the examination.
 - (2) Refusal to submit to the drug toxicology screen immediately upon such request shall constitute failure to submit to a mental or physical examination ordered by the board and shall constitute an admission of the allegations against the individual, unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.
- (E) An individual ordered by the board to an examination who refuses to authorize the treatment provider to contact any person identified by the treatment provider as being appropriate for the purpose of conducting a corroborating interview as part of the examination shall be deemed to have failed to submit to the examination due to circumstances within the individual's control, and a default and final order may be entered into without the taking of testimony or presentation of evidence.

4731-16-08

Criteria for approval.

(A) Criteria for approval of treatment providers shall include all of the following:

- (1) The philosophy and individualized treatment plan of the program is based on the disease concept.
- (2) The chemical dependency model of treatment is based on a twelve-step program such as alcoholics anonymous.
- (3) The program provides specialized medical and nursing care during detoxification and appropriate health care professionals during treatment phase.
- (4) The evaluation process is an objective, measurable program which uses tools and testing procedures to identify patterns, progression, and stages of recovery at appropriate times in the treatment program. The evaluation shall also emphasize patient self-assessment.
- (5) The treatment provider has a network of referral agencies or professionals which meets the needs of the practitioner and significant others in the event that the needs go beyond the program's expertise or available facilities.
- (6) The treatment provider has a variety of treatment plan options including inpatient detoxification treatment, inpatient or residential treatment, and outpatient services.
- (7) The involvement and treatment of family and significant others is provided.
- (8) The provider gives each patient who has been diagnosed as in need of treatment a written list of approved treatment providers from whom indicated inpatient or residential treatment, outpatient treatment, or aftercare can be obtained.
- (9) The provider holds certification as an alcoholism program or drug treatment program by the Ohio department of alcohol and drug addiction services, or if located outside Ohio, holds appropriate certification or registration with an agency exercising a similar function in the state in which it is located.
- (10) The provider provides advocacy services only at no cost to the patient, or provides such services only after obtaining the signature of the patient acknowledging that he or she has been notified:

- (a) That advocacy is not treatment;
 - (b) That nothing in Chapter 4730., 4731., 4759., 4760., 4761., ~~or 4762.~~, 4774., or 4778. of the Revised Code or this chapter of the Administrative Code requires a practitioner to obtain aftercare, monitoring or advocacy from the provider of inpatient or extended residential treatment or intensive outpatient treatment, as applicable; and
 - (c) That the practitioner's refusal to obtain aftercare, monitoring, or advocacy services from the provider of inpatient treatment or intensive outpatient treatment, as applicable, shall not constitute grounds to report to the board so long as the practitioner demonstrates that the practitioner has contracted with another approved treatment provider to receive any further recommended treatment.
- (11) The provider has the capability of making an initial examination to determine what type of treatment an impaired practitioner requires.
- (12) The provider requires that each patient who is subject to the jurisdiction of the board, who is determined to be impaired, except as provided in paragraph (A)(13) of this rule, complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The exceptions in paragraph (C) of this rule notwithstanding, the provider must personally provide the required inpatient or residential treatment and the assessment or must confirm that another approved treatment provider has provided the inpatient or residential treatment and the assessment before providing any outpatient treatment or aftercare. The inpatient or residential treatment program must have a continuing inpatient or residential patient census sufficient to provide an appropriate treatment milieu for patients receiving treatment in the inpatient or residential setting. This paragraph shall not apply to a patient who has previously completed an inpatient or residential treatment program of at least twenty-eight days if the patient was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment.
- (13) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who is determined to be impaired and who does not meet the criteria set forth in paragraph (A)(14) of this rule, complete a minimum of twenty treatment

sessions over no less than five consecutive weeks of intensive outpatient treatment, after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. The intensive outpatient treatment must include:

- (a) Witnessed toxicology screens with legal chain of custody and forensic capability performed weekly at therapy sessions;
 - (b) At least three twelve-step meetings weekly;
 - (c) All treatment sessions lasting a minimum of three hours, not including time spent watching videos or participating in twelve-step meetings;
 - (d) Family education lasting at least two hours weekly.
- (14) The provider requires that a massage therapist, dietitian, respiratory care professional, radiologist assistant, or genetic counselor ~~or cosmetic therapist~~ who was investigated by the board for possible impairment as part of a previous application or while holding any certificate by the board other than a certificate to practice as a massage therapist, dietitian, respiratory care professional, radiologist assistant or genetic counselor ~~or cosmetic therapist~~, complete the inpatient or residential treatment required in paragraph (A)(12) of this rule.
- (15) If the provider did not hold approval under this chapter prior to January 1, 2001, the provider is accredited by the joint commission on accreditation of health care organizations or by CARF (~~commission~~commission on accreditation of rehabilitation facilities.)
- (B) A treatment provider which does not meet the criteria of paragraph (A)(1) or (A)(2) of this rule may nonetheless be considered for approval if it establishes by evidence acceptable to the board that its philosophy, individualized treatment plan, or model of treatment is based on current scientific advances in the field of chemical dependency, and that its success in treatment is comparable or superior to that obtained by treatment providers which meet all the criteria of paragraph (A) of this rule.
- (C) A treatment provider that does not meet the criteria of paragraph (A)(3) or (A)(6) of this rule because it does not offer all phases of treatment may nonetheless be considered for approval if it meets both of the following requirements.
- (1) If it does not offer detoxification treatment, its policies and procedures are

structured to assure that all patients who enter treatment have completed detoxification where detoxification is medically indicated.

- (2) If it does not offer one or more required treatment phases (e.g. - inpatient treatment, intensive outpatient treatment, or extended residential treatment), it has affiliation agreements or working relationships with other treatment providers to which patients can be referred for any necessary treatment it does not offer.