

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 290**

**Representatives Sprague, Anielski**

**Cosponsors: Representatives Blessing, Dever, Grossman, Hackett, Henne,  
Rezabek, Romanchuk, Thompson**

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**A BILL**

To amend sections 1739.05, 4729.291, 4729.51, 1  
4729.57, 4731.22, and 4731.227 and to enact 2  
sections 1751.671, 3923.851, 4729.88, 4729.89, 3  
and 4731.96 of the Revised Code to permit a 4  
physician to treat a terminally ill patient with 5  
a drug that is not approved by the United States 6  
Food and Drug Administration and permit a drug 7  
manufacturer to provide such a drug to the 8  
patient or physician. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1739.05, 4729.291, 4729.51, 10  
4729.57, 4731.22, and 4731.227 be amended and sections 1751.671, 11  
3923.851, 4729.88, 4729.89, and 4731.96 of the Revised Code be 12  
enacted to read as follows: 13

**Sec. 1739.05.** (A) A multiple employer welfare arrangement 14  
that is created pursuant to sections 1739.01 to 1739.22 of the 15  
Revised Code and that operates a group self-insurance program 16  
may be established only if any of the following applies: 17

(1) The arrangement has and maintains a minimum enrollment 18

of three hundred employees of two or more employers. 19

(2) The arrangement has and maintains a minimum enrollment 20  
of three hundred self-employed individuals. 21

(3) The arrangement has and maintains a minimum enrollment 22  
of three hundred employees or self-employed individuals in any 23  
combination of divisions (A) (1) and (2) of this section. 24

(B) A multiple employer welfare arrangement that is 25  
created pursuant to sections 1739.01 to 1739.22 of the Revised 26  
Code and that operates a group self-insurance program shall 27  
comply with all laws applicable to self-funded programs in this 28  
state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 29  
3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 30  
3902.01 to 3902.14, 3923.24, 3923.282, 3923.30, 3923.301, 31  
3923.38, 3923.581, 3923.63, 3923.80, 3923.85, 3923.851, 32  
3924.031, 3924.032, and 3924.27 of the Revised Code. 33

(C) A multiple employer welfare arrangement created 34  
pursuant to sections 1739.01 to 1739.22 of the Revised Code 35  
shall solicit enrollments only through agents or solicitors 36  
licensed pursuant to Chapter 3905. of the Revised Code to sell 37  
or solicit sickness and accident insurance. 38

(D) A multiple employer welfare arrangement created 39  
pursuant to sections 1739.01 to 1739.22 of the Revised Code 40  
shall provide benefits only to individuals who are members, 41  
employees of members, or the dependents of members or employees, 42  
or are eligible for continuation of coverage under section 43  
1751.53 or 3923.38 of the Revised Code or under Title X of the 44  
"Consolidated Omnibus Budget Reconciliation Act of 1985," 100 45  
Stat. 227, 29 U.S.C.A. 1161, as amended. 46

Sec. 1751.671. (A) As used in this section: 47

(1) "Investigational drug, product, or device" has the same meaning as under section 4731.96 of the Revised Code. 48  
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(2) "Investigational drug, product, or device recipient" means an individual receiving an investigational drug, product, or device under sections 4729.88 and 4731.96 of the Revised Code. 50  
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(B) An individual or group health policy, contract, or agreement issued by a health insuring corporation may exclude coverage in relation to an investigational drug, product, or device according to both of the following: 54  
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(1) The policy, contract, or agreement may exclude coverage for the cost of an investigational drug, product, or device provided under sections 4729.88 and 4731.96 of the Revised Code; 58  
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(2)(a) The policy, contract, or agreement may exclude coverage for an investigational drug, product, or device recipient beginning on the date that the investigational drug, product, or device is first dispensed to the recipient. 62  
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(b) The exclusion prescribed in division (B)(2)(a) of this section is subject to the following: 66  
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(i) The exclusion shall not last for a period of more than six months. 68  
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(ii) The exclusion shall not include conditions that existed prior to the start date of the exclusion. 70  
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(iii) The exclusion shall not include benefits that commenced prior to the start date of the exclusion. 72  
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(C) If an investigational drug, product, or device recipient dies while being treated with an investigational drug, 74  
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product, or device, the recipient's estate, devisees, and heirs 76  
shall not be liable for any outstanding costs related to 77  
treating the recipient or the recipient's lack of health 78  
insurance coverage under division (B) of this section. 79

**Sec. 3923.851.** (A) As used in this section: 80

(1) "Investigational drug, product, or device" has the 81  
same meaning as under section 4731.96 of the Revised Code. 82

(2) "Investigational drug, product, or device recipient" 83  
means an individual receiving an investigational drug, product, 84  
or device under sections 4729.88 and 4731.96 of the Revised 85  
Code. 86

(B) An individual or group policy of sickness and accident 87  
insurance that is delivered, issued for delivery, or renewed in 88  
this state, or a public employee benefit plan that is 89  
established or modified in this state, may exclude coverage in 90  
relation to an investigational drug, product, or device 91  
according to both of the following: 92

(1) The policy or plan may exclude coverage for the cost 93  
of an investigational drug, product, or device provided under 94  
sections 4729.88 and 4731.96 of the Revised Code; 95

(2) (a) The policy or plan may exclude coverage for an 96  
investigational drug, product, or device recipient beginning on 97  
the date that the investigational drug, product, or device is 98  
first dispensed to the recipient. 99

(b) The exclusion prescribed in division (B) (2) (a) of this 100  
section is subject to the following: 101

(i) The exclusion shall not last for a period of more than 102  
six months. 103

(ii) The exclusion shall not include conditions that 104  
existed prior to the start date of the exclusion. 105

(iii) The exclusion shall not include benefits that 106  
commenced prior to the start date of the exclusion. 107

(C) If an investigational drug, product, or device 108  
recipient dies while being treated with an investigational drug, 109  
product, or device, the recipient's estate, devisees, and heirs 110  
shall not be liable for any outstanding costs related to 111  
treating the recipient or to the recipient's lack of health 112  
insurance coverage under division (B) of this section. 113

**Sec. 4729.291.** (A) When—Except when provided under section 114  
4731.96 of the Revised Code, when a licensed health professional 115  
authorized to prescribe drugs personally furnishes drugs to a 116  
patient pursuant to division (B) of section 4729.29 of the 117  
Revised Code, the prescriber shall ensure that the drugs are 118  
labeled and packaged in accordance with state and federal drug 119  
laws and any rules and regulations adopted pursuant to those 120  
laws. Records of purchase and disposition of all drugs 121  
personally furnished to patients shall be maintained by the 122  
prescriber in accordance with state and federal drug statutes 123  
and any rules adopted pursuant to those statutes. 124

(B) When personally furnishing to a patient RU-486 125  
(mifepristone), a prescriber is subject to section 2919.123 of 126  
the Revised Code. A prescription for RU-486 (mifepristone) shall 127  
be in writing and in accordance with section 2919.123 of the 128  
Revised Code. 129

(C) (1) Except as provided in division (D) of this section, 130  
no prescriber shall do either of the following: 131

(a) In any thirty-day period, personally furnish to or for 132

patients, taken as a whole, controlled substances in an amount 133  
that exceeds a total of two thousand five hundred dosage units; 134

(b) In any seventy-two-hour period, personally furnish to 135  
or for a patient an amount of a controlled substance that 136  
exceeds the amount necessary for the patient's use in a seventy- 137  
two-hour period. 138

(2) The state board of pharmacy may impose a fine of not 139  
more than five thousand dollars on a prescriber who fails to 140  
comply with the limits established under division (C) (1) of this 141  
section. A separate fine may be imposed for each instance of 142  
failing to comply with the limits. In imposing the fine, the 143  
board's actions shall be taken in accordance with Chapter 119. 144  
of the Revised Code. 145

(D) (1) None of the following shall be counted in 146  
determining whether the amounts specified in division (C) (1) of 147  
this section have been exceeded: 148

(a) Methadone provided to patients for the purpose of 149  
treating drug dependence or addiction, if the prescriber meets 150  
the conditions specified in 21 C.F.R. 1306.07; 151

(b) Buprenorphine provided to patients for the purpose of 152  
treating drug dependence or addiction as part of an opioid 153  
treatment program that is the subject of a current, valid 154  
certification from the substance abuse and mental health 155  
services administration of the United States department of 156  
health and human services pursuant to 42 C.F.R. 8.11 and 157  
distributes both buprenorphine and methadone; 158

(c) Controlled substances provided to research subjects by 159  
a facility conducting clinical research in studies approved by a 160  
hospital-based institutional review board or an institutional 161

review board accredited by the association for the accreditation 162  
of human research protection programs. 163

(2) Division (C) (1) of this section does not apply to a 164  
prescriber who is a veterinarian. 165

**Sec. 4729.51.** (A) (1) Except as provided in division (A) (2) 166  
of this section, no person other than a registered wholesale 167  
distributor of dangerous drugs shall possess for sale, sell, 168  
distribute, or deliver, at wholesale, dangerous drugs, except as 169  
follows: 170

(a) A pharmacist who is a licensed terminal distributor of 171  
dangerous drugs or who is employed by a licensed terminal 172  
distributor of dangerous drugs may make occasional sales of 173  
dangerous drugs at wholesale; 174

(b) A licensed terminal distributor of dangerous drugs 175  
having more than one establishment or place may transfer or 176  
deliver dangerous drugs from one establishment or place for 177  
which a license has been issued to the terminal distributor to 178  
another establishment or place for which a license has been 179  
issued to the terminal distributor if the license issued for 180  
each establishment or place is in effect at the time of the 181  
transfer or delivery. 182

(2) A manufacturer of dangerous drugs may donate 183  
epinephrine autoinjectors to any of the following: 184

(a) The board of education of a city, local, exempted 185  
village, or joint vocational school district; 186

(b) A community school established under Chapter 3314. of 187  
the Revised Code; 188

(c) A STEM school established under Chapter 3326. of the 189

Revised Code;	190
(d) A college-preparatory boarding school established under Chapter 3328. of the Revised Code;	191 192
(e) A chartered or nonchartered nonpublic school.	193
(B) (1) No registered wholesale distributor of dangerous drugs shall possess for sale, or sell, at wholesale, dangerous drugs to any person other than the following:	194 195 196
(a) Except as provided in division (B) (2) (a) of this section, a licensed health professional authorized to prescribe drugs;	197 198 199
(b) An optometrist licensed under Chapter 4725. of the Revised Code who holds a topical ocular pharmaceutical agents certificate;	200 201 202
(c) A registered wholesale distributor of dangerous drugs;	203
(d) A manufacturer of dangerous drugs;	204
(e) Subject to division (B) (3) of this section, a licensed terminal distributor of dangerous drugs;	205 206
(f) Carriers or warehouses for the purpose of carriage or storage;	207 208
(g) Terminal or wholesale distributors of dangerous drugs who are not engaged in the sale of dangerous drugs within this state;	209 210 211
(h) An individual who holds a current license, certificate, or registration issued under Title XLVII of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of	212 213 214 215 216



the Revised Code, but only with respect to insulin that will be 217  
used for the purpose of diabetes education and only if diabetes 218  
education is within the individual's scope of practice under 219  
statutes and rules regulating the individual's profession; 220

(i) An individual who holds a valid certificate issued by 221  
a nationally recognized S.C.U.B.A. diving certifying 222  
organization approved by the state board of pharmacy in rule, 223  
but only with respect to medical oxygen that will be used for 224  
the purpose of emergency care or treatment at the scene of a 225  
diving emergency; 226

(j) Except as provided in division (B)(2)(b) of this 227  
section, a business entity that is a corporation formed under 228  
division (B) of section 1701.03 of the Revised Code, a limited 229  
liability company formed under Chapter 1705. of the Revised 230  
Code, or a professional association formed under Chapter 1785. 231  
of the Revised Code if the entity has a sole shareholder who is 232  
a licensed health professional authorized to prescribe drugs and 233  
is authorized to provide the professional services being offered 234  
by the entity; 235

(k) Except as provided in division (B)(2)(c) of this 236  
section, a business entity that is a corporation formed under 237  
division (B) of section 1701.03 of the Revised Code, a limited 238  
liability company formed under Chapter 1705. of the Revised 239  
Code, a partnership or a limited liability partnership formed 240  
under Chapter 1775. of the Revised Code, or a professional 241  
association formed under Chapter 1785. of the Revised Code, if, 242  
to be a shareholder, member, or partner, an individual is 243  
required to be licensed, certified, or otherwise legally 244  
authorized under Title XLVII of the Revised Code to perform the 245  
professional service provided by the entity and each such 246

individual is a licensed health professional authorized to 247  
prescribe drugs; 248

(l) With respect to epinephrine autoinjectors that may be 249  
possessed under section 3313.7110, 3313.7111, 3314.143, 3326.28, 250  
or 3328.29 of the Revised Code, any of the following: the board 251  
of education of a city, local, exempted village, or joint 252  
vocational school district; a chartered or nonchartered 253  
nonpublic school; a community school established under Chapter 254  
3314. of the Revised Code; a STEM school established under 255  
Chapter 3326. of the Revised Code; or a college-preparatory 256  
boarding school established under Chapter 3328. of the Revised 257  
Code; 258

(m) With respect to epinephrine autoinjectors that may be 259  
possessed under section 5101.76 of the Revised Code, any of the 260  
following: a residential camp, as defined in section 2151.011 of 261  
the Revised Code; a child day camp, as defined in section 262  
5104.01 of the Revised Code; or a child day camp operated by any 263  
county, township, municipal corporation, township park district 264  
created under section 511.18 of the Revised Code, park district 265  
created under section 1545.04 of the Revised Code, or joint 266  
recreation district established under section 755.14 of the 267  
Revised Code; 268

(n) With respect to naloxone that may be possessed under 269  
section 2925.61 of the Revised Code, a law enforcement agency 270  
and its peace officers. 271

(2) No registered wholesale distributor of dangerous drugs 272  
shall possess for sale, or sell, at wholesale, dangerous drugs 273  
to any of the following: 274

(a) A prescriber who is employed by a pain management 275

clinic that is not licensed as a terminal distributor of 276  
dangerous drugs with a pain management clinic classification 277  
issued under section 4729.552 of the Revised Code; 278

(b) A business entity described in division (B) (1) (j) of 279  
this section that is, or is operating, a pain management clinic 280  
without a license as a terminal distributor of dangerous drugs 281  
with a pain management clinic classification issued under 282  
section 4729.552 of the Revised Code; 283

(c) A business entity described in division (B) (1) (k) of 284  
this section that is, or is operating, a pain management clinic 285  
without a license as a terminal distributor of dangerous drugs 286  
with a pain management clinic classification issued under 287  
section 4729.552 of the Revised Code. 288

(3) No registered wholesale distributor of dangerous drugs 289  
shall possess dangerous drugs for sale at wholesale, or sell 290  
such drugs at wholesale, to a licensed terminal distributor of 291  
dangerous drugs, except as follows: 292

(a) In the case of a terminal distributor with a category 293  
I license, only dangerous drugs described in category I, as 294  
defined in division (A) (1) of section 4729.54 of the Revised 295  
Code; 296

(b) In the case of a terminal distributor with a category 297  
II license, only dangerous drugs described in category I and 298  
category II, as defined in divisions (A) (1) and (2) of section 299  
4729.54 of the Revised Code; 300

(c) In the case of a terminal distributor with a category 301  
III license, dangerous drugs described in category I, category 302  
II, and category III, as defined in divisions (A) (1), (2), and 303  
(3) of section 4729.54 of the Revised Code; 304

(d) In the case of a terminal distributor with a limited category I, II, or III license, only the dangerous drugs specified in the certificate furnished by the terminal distributor in accordance with section 4729.60 of the Revised Code.

(C) (1) Except as provided in division (C) (4) of this section, no person shall sell, at retail, dangerous drugs.

(2) Except as provided in division (C) (4) of this section, no person shall possess for sale, at retail, dangerous drugs.

(3) Except as provided in division (C) (4) of this section, no person shall possess dangerous drugs.

(4) Divisions (C) (1), (2), and (3) of this section do not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, or possesses for sale or sells, at retail, a dangerous drug in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. of the Revised Code.

Divisions (C) (1), (2), and (3) of this section do not apply to an individual who holds a current license, certificate, or registration issued under Title XLVII of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of the Revised Code, but only to the extent that the individual possesses insulin or personally supplies insulin solely for the purpose of diabetes education and only if diabetes education is within the individual's scope of practice under statutes and rules regulating the individual's profession.

Divisions (C) (1), (2), and (3) of this section do not

apply to an individual who holds a valid certificate issued by a 334  
nationally recognized S.C.U.B.A. diving certifying organization 335  
approved by the state board of pharmacy in rule, but only to the 336  
extent that the individual possesses medical oxygen or 337  
personally supplies medical oxygen for the purpose of emergency 338  
care or treatment at the scene of a diving emergency. 339

Division (C) (3) of this section does not apply to the 340  
board of education of a city, local, exempted village, or joint 341  
vocational school district, a school building operated by a 342  
school district board of education, a chartered or nonchartered 343  
nonpublic school, a community school, a STEM school, or a 344  
college-preparatory boarding school for the purpose of 345  
possessing epinephrine autoinjectors under section 3313.7110, 346  
3313.7111, 3314.143, 3326.28, or 3328.29 of the Revised Code. 347

Division (C) (3) of this section does not apply to a 348  
residential camp, as defined in section 2151.011 of the Revised 349  
Code, a child day camp, as defined in section 5104.01 of the 350  
Revised Code, or a child day camp operated by any county, 351  
township, municipal corporation, township park district created 352  
under section 511.18 of the Revised Code, park district created 353  
under section 1545.04 of the Revised Code, or joint recreation 354  
district established under section 755.14 of the Revised Code 355  
for the purpose of possessing epinephrine autoinjectors under 356  
section 5101.76 of the Revised Code. 357

Division (C) (3) of this section does not apply to a law 358  
enforcement agency or the agency's peace officers if the agency 359  
or officers possess naloxone for administration to individuals 360  
who are apparently experiencing opioid-related overdoses. 361

Divisions (C) (1), (2), and (3) of this section do not 362  
apply to a manufacturer of dangerous drugs that provides an 363

investigational drug, product, or device to an eligible patient 364  
under section 4729.88 of the Revised Code or to the patient's 365  
treating physician as defined in section 4731.96 of the Revised 366  
Code. 367

(D) No licensed terminal distributor of dangerous drugs 368  
shall purchase for the purpose of resale dangerous drugs from 369  
any person other than a registered wholesale distributor of 370  
dangerous drugs, except as follows: 371

(1) A licensed terminal distributor of dangerous drugs may 372  
make occasional purchases of dangerous drugs for resale from a 373  
pharmacist who is a licensed terminal distributor of dangerous 374  
drugs or who is employed by a licensed terminal distributor of 375  
dangerous drugs; 376

(2) A licensed terminal distributor of dangerous drugs 377  
having more than one establishment or place may transfer or 378  
receive dangerous drugs from one establishment or place for 379  
which a license has been issued to the terminal distributor to 380  
another establishment or place for which a license has been 381  
issued to the terminal distributor if the license issued for 382  
each establishment or place is in effect at the time of the 383  
transfer or receipt. 384

(E) No licensed terminal distributor of dangerous drugs 385  
shall engage in the sale or other distribution of dangerous 386  
drugs at retail or maintain possession, custody, or control of 387  
dangerous drugs for any purpose other than the distributor's 388  
personal use or consumption, at any establishment or place other 389  
than that or those described in the license issued by the state 390  
board of pharmacy to such terminal distributor. 391

(F) Nothing in this section shall be construed to 392

interfere with the performance of official duties by any law 393  
enforcement official authorized by municipal, county, state, or 394  
federal law to collect samples of any drug, regardless of its 395  
nature or in whose possession it may be. 396

(G) Notwithstanding anything to the contrary in this 397  
section, the board of education of a city, local, exempted 398  
village, or joint vocational school district may deliver 399  
epinephrine autoinjectors to a school under its control for the 400  
purpose of possessing epinephrine autoinjectors under section 401  
3313.7110 of the Revised Code. 402

**Sec. 4729.57.** (A) The state board of pharmacy may suspend, 403  
revoke, or refuse to grant or renew any license as a terminal 404  
distributor of dangerous drugs, or may impose a monetary penalty 405  
or forfeiture not to exceed in severity any fine designated 406  
under the Revised Code for a similar offense or one thousand 407  
dollars if the acts committed have not been classified as an 408  
offense by the Revised Code, for any of the following causes: 409

(1) Making any false material statements in an application 410  
for a license as a terminal distributor of dangerous drugs; 411

(2) Violating any rule of the board; 412

(3) Violating any provision of this chapter; 413

(4) ~~Violating~~ Except as provided in section 4729.88 of the 414  
Revised Code, violating any provision of the "Federal Food, 415  
Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, 416  
or Chapter 3715. of the Revised Code; 417

(5) Violating any provision of the federal drug abuse 418  
control laws or Chapter 2925. or 3719. of the Revised Code; 419

(6) Falsely or fraudulently promoting to the public a 420

dangerous drug, except that nothing in this division prohibits a 421  
terminal distributor of dangerous drugs from furnishing 422  
information concerning a dangerous drug to a health care 423  
provider or another licensed terminal distributor; 424

(7) Ceasing to satisfy the qualifications of a terminal 425  
distributor of dangerous drugs set forth in section 4729.55 of 426  
the Revised Code; 427

(8) Except as provided in division (B) of this section: 428

(a) Waiving the payment of all or any part of a deductible 429  
or copayment that an individual, pursuant to a health insurance 430  
or health care policy, contract, or plan that covers the 431  
services provided by a terminal distributor of dangerous drugs, 432  
would otherwise be required to pay for the services if the 433  
waiver is used as an enticement to a patient or group of 434  
patients to receive pharmacy services from that terminal 435  
distributor; 436

(b) Advertising that the terminal distributor will waive 437  
the payment of all or any part of a deductible or copayment that 438  
an individual, pursuant to a health insurance or health care 439  
policy, contract, or plan that covers the pharmaceutical 440  
services, would otherwise be required to pay for the services. 441

(B) Sanctions shall not be imposed under division (A) (8) 442  
of this section against any terminal distributor of dangerous 443  
drugs that waives deductibles and copayments as follows: 444

(1) In compliance with a health benefit plan that 445  
expressly allows such a practice. Waiver of the deductibles or 446  
copayments shall be made only with the full knowledge and 447  
consent of the plan purchaser, payer, and third-party 448  
administrator. Documentation of the consent shall be made 449



available to the board on request. 450

(2) For professional services rendered to any other person 451  
licensed pursuant to this chapter to the extent allowed by this 452  
chapter and the rules of the board. 453

(C) (1) Upon the suspension or revocation of a license 454  
issued to a terminal distributor of dangerous drugs or the 455  
refusal by the board to renew such a license, the distributor 456  
shall immediately surrender the license to the board. 457

(2) The board may place under seal all dangerous drugs 458  
that are owned by or in the possession, custody, or control of a 459  
terminal distributor at the time the license is suspended or 460  
revoked or at the time the board refuses to renew the license. 461  
Except as otherwise provided in this division, dangerous drugs 462  
so sealed shall not be disposed of until appeal rights under 463  
Chapter 119. of the Revised Code have expired or an appeal filed 464  
pursuant to that chapter has been determined. 465

The court involved in an appeal filed pursuant to Chapter 466  
119. of the Revised Code may order the board, during the 467  
pendency of the appeal, to sell sealed dangerous drugs that are 468  
perishable. The proceeds of such a sale shall be deposited with 469  
that court. 470

Sec. 4729.88. (A) As used in this section and section 471  
4729.89 of the Revised Code, "eligible patient," 472  
"investigational drug, product, or device," "terminal illness," 473  
and "treating physician" have the same meanings as in section 474  
4731.96 of the Revised Code. 475

(B) A manufacturer of dangerous drugs may, in accordance 476  
with section 4731.96 of the Revised Code, provide an 477  
investigational drug, product, or device for treatment of a 478

terminal illness to an eligible patient or to the treating 479  
physician treating the eligible patient's terminal illness. 480

The manufacturer may do all of the following: 481

(1) Provide the investigational drug, product, or device 482  
to the patient or treating physician directly or through a 483  
terminal distributor of dangerous drugs; 484

(2) Provide the investigational drug, product, or device 485  
without charge or charge for the costs associated with 486  
manufacturing and providing the investigational drug, product, 487  
or device; 488

(3) Require the eligible patient to participate in data 489  
collection relating to use of the investigational drug, product, 490  
or device. 491

(C) Except for actions or omissions constituting willful 492  
or wanton misconduct: 493

(1) A manufacturer or terminal distributor of dangerous 494  
drugs that provides or distributes an investigational drug, 495  
product, or device pursuant to this section and section 4731.96 496  
of the Revised Code is not liable for or subject to damages in 497  
any civil action or prosecution in any criminal proceeding for 498  
actions or omissions related to providing or distributing the 499  
investigational drug, product, or device. 500

(2) A terminal distributor of dangerous drugs that 501  
distributes an investigational drug, product, or device pursuant 502  
to this section and section 4731.96 of the Revised Code is not 503  
subject to any action related to its license under Chapter 4729. 504  
of the Revised Code for actions or omissions related to 505  
distributing the investigationalinvestgational drug, product, or 506  
device. 507

(D) Nothing in this section shall be interpreted as 508  
requiring a manufacturer or terminal distributor to provide an 509  
investigational drug, product, or device to a patient or the 510  
patient's treating physician. 511

Sec. 4729.89. No official, employee, or agent of the state 512  
shall prevent or attempt to prevent access by an eligible 513  
patient or eligible patient's treating physician to an 514  
investigational drug, product, or device that is being provided 515  
or is to be provided in accordance with section 4729.88 or 516  
4731.96 of the Revised Code. 517

**Sec. 4731.22.** (A) The state medical board, by an 518  
affirmative vote of not fewer than six of its members, may 519  
limit, revoke, or suspend an individual's certificate to 520  
practice, refuse to grant a certificate to an individual, refuse 521  
to register an individual, refuse to reinstate a certificate, or 522  
reprimand or place on probation the holder of a certificate if 523  
the individual or certificate holder is found by the board to 524  
have committed fraud during the administration of the 525  
examination for a certificate to practice or to have committed 526  
fraud, misrepresentation, or deception in applying for or 527  
securing any certificate to practice or certificate of 528  
registration issued by the board. 529

(B) The board, by an affirmative vote of not fewer than 530  
six members, shall, to the extent permitted by law, limit, 531  
revoke, or suspend an individual's certificate to practice, 532  
refuse to register an individual, refuse to reinstate a 533  
certificate, or reprimand or place on probation the holder of a 534  
certificate for one or more of the following reasons: 535

(1) Permitting one's name or one's certificate to practice 536  
or certificate of registration to be used by a person, group, or 537

corporation when the individual concerned is not actually 538  
directing the treatment given; 539

(2) Failure to maintain minimal standards applicable to 540  
the selection or administration of drugs, or failure to employ 541  
acceptable scientific methods in the selection of drugs or other 542  
modalities for treatment of disease; 543

(3) ~~Selling~~ Except as provided in section 4731.96 of the 544  
Revised Code, selling, giving away, personally furnishing, 545  
prescribing, or administering drugs for other than legal and 546  
legitimate therapeutic purposes or a plea of guilty to, a 547  
judicial finding of guilt of, or a judicial finding of 548  
eligibility for intervention in lieu of conviction of, a 549  
violation of any federal or state law regulating the possession, 550  
distribution, or use of any drug; 551

(4) Willfully betraying a professional confidence. 552

For purposes of this division, "willfully betraying a 553  
professional confidence" does not include providing any 554  
information, documents, or reports to a child fatality review 555  
board under sections 307.621 to 307.629 of the Revised Code and 556  
does not include the making of a report of an employee's use of 557  
a drug of abuse, or a report of a condition of an employee other 558  
than one involving the use of a drug of abuse, to the employer 559  
of the employee as described in division (B) of section 2305.33 560  
of the Revised Code. Nothing in this division affects the 561  
immunity from civil liability conferred by that section upon a 562  
physician who makes either type of report in accordance with 563  
division (B) of that section. As used in this division, 564  
"employee," "employer," and "physician" have the same meanings 565  
as in section 2305.33 of the Revised Code. 566

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in 596  
this state, regardless of the jurisdiction in which the act was 597  
committed; 598

(11) A plea of guilty to, a judicial finding of guilt of, 599  
or a judicial finding of eligibility for intervention in lieu of 600  
conviction for, a misdemeanor committed in the course of 601  
practice; 602

(12) Commission of an act in the course of practice that 603  
constitutes a misdemeanor in this state, regardless of the 604  
jurisdiction in which the act was committed; 605

(13) A plea of guilty to, a judicial finding of guilt of, 606  
or a judicial finding of eligibility for intervention in lieu of 607  
conviction for, a misdemeanor involving moral turpitude; 608

(14) Commission of an act involving moral turpitude that 609  
constitutes a misdemeanor in this state, regardless of the 610  
jurisdiction in which the act was committed; 611

(15) Violation of the conditions of limitation placed by 612  
the board upon a certificate to practice; 613

(16) Failure to pay license renewal fees specified in this 614  
chapter; 615

(17) Except as authorized in section 4731.31 of the 616  
Revised Code, engaging in the division of fees for referral of 617  
patients, or the receiving of a thing of value in return for a 618  
specific referral of a patient to utilize a particular service 619  
or business; 620

(18) Subject to section 4731.226 of the Revised Code, 621  
violation of any provision of a code of ethics of the American 622  
medical association, the American osteopathic association, the 623

American podiatric medical association, or any other national 624  
professional organizations that the board specifies by rule. The 625  
state medical board shall obtain and keep on file current copies 626  
of the codes of ethics of the various national professional 627  
organizations. The individual whose certificate is being 628  
suspended or revoked shall not be found to have violated any 629  
provision of a code of ethics of an organization not appropriate 630  
to the individual's profession. 631

For purposes of this division, a "provision of a code of 632  
ethics of a national professional organization" does not include 633  
any provision that would preclude the making of a report by a 634  
physician of an employee's use of a drug of abuse, or of a 635  
condition of an employee other than one involving the use of a 636  
drug of abuse, to the employer of the employee as described in 637  
division (B) of section 2305.33 of the Revised Code. Nothing in 638  
this division affects the immunity from civil liability 639  
conferred by that section upon a physician who makes either type 640  
of report in accordance with division (B) of that section. As 641  
used in this division, "employee," "employer," and "physician" 642  
have the same meanings as in section 2305.33 of the Revised 643  
Code. 644

(19) Inability to practice according to acceptable and 645  
prevailing standards of care by reason of mental illness or 646  
physical illness, including, but not limited to, physical 647  
deterioration that adversely affects cognitive, motor, or 648  
perceptive skills. 649

In enforcing this division, the board, upon a showing of a 650  
possible violation, may compel any individual authorized to 651  
practice by this chapter or who has submitted an application 652  
pursuant to this chapter to submit to a mental examination, 653

physical examination, including an HIV test, or both a mental 654  
and a physical examination. The expense of the examination is 655  
the responsibility of the individual compelled to be examined. 656  
Failure to submit to a mental or physical examination or consent 657  
to an HIV test ordered by the board constitutes an admission of 658  
the allegations against the individual unless the failure is due 659  
to circumstances beyond the individual's control, and a default 660  
and final order may be entered without the taking of testimony 661  
or presentation of evidence. If the board finds an individual 662  
unable to practice because of the reasons set forth in this 663  
division, the board shall require the individual to submit to 664  
care, counseling, or treatment by physicians approved or 665  
designated by the board, as a condition for initial, continued, 666  
reinstated, or renewed authority to practice. An individual 667  
affected under this division shall be afforded an opportunity to 668  
demonstrate to the board the ability to resume practice in 669  
compliance with acceptable and prevailing standards under the 670  
provisions of the individual's certificate. For the purpose of 671  
this division, any individual who applies for or receives a 672  
certificate to practice under this chapter accepts the privilege 673  
of practicing in this state and, by so doing, shall be deemed to 674  
have given consent to submit to a mental or physical examination 675  
when directed to do so in writing by the board, and to have 676  
waived all objections to the admissibility of testimony or 677  
examination reports that constitute a privileged communication. 678

(20) Except when civil penalties are imposed under section 679  
4731.225 or 4731.281 of the Revised Code, and subject to section 680  
4731.226 of the Revised Code, violating or attempting to 681  
violate, directly or indirectly, or assisting in or abetting the 682  
violation of, or conspiring to violate, any provisions of this 683  
chapter or any rule promulgated by the board. 684



This division does not apply to a violation or attempted 685  
violation of, assisting in or abetting the violation of, or a 686  
conspiracy to violate, any provision of this chapter or any rule 687  
adopted by the board that would preclude the making of a report 688  
by a physician of an employee's use of a drug of abuse, or of a 689  
condition of an employee other than one involving the use of a 690  
drug of abuse, to the employer of the employee as described in 691  
division (B) of section 2305.33 of the Revised Code. Nothing in 692  
this division affects the immunity from civil liability 693  
conferred by that section upon a physician who makes either type 694  
of report in accordance with division (B) of that section. As 695  
used in this division, "employee," "employer," and "physician" 696  
have the same meanings as in section 2305.33 of the Revised 697  
Code. 698

(21) The violation of section 3701.79 of the Revised Code 699  
or of any abortion rule adopted by the public health council 700  
pursuant to section 3701.341 of the Revised Code; 701

(22) Any of the following actions taken by an agency 702  
responsible for authorizing, certifying, or regulating an 703  
individual to practice a health care occupation or provide 704  
health care services in this state or another jurisdiction, for 705  
any reason other than the nonpayment of fees: the limitation, 706  
revocation, or suspension of an individual's license to 707  
practice; acceptance of an individual's license surrender; 708  
denial of a license; refusal to renew or reinstate a license; 709  
imposition of probation; or issuance of an order of censure or 710  
other reprimand; 711

(23) The violation of section 2919.12 of the Revised Code 712  
or the performance or inducement of an abortion upon a pregnant 713  
woman with actual knowledge that the conditions specified in 714

division (B) of section 2317.56 of the Revised Code have not 715  
been satisfied or with a heedless indifference as to whether 716  
those conditions have been satisfied, unless an affirmative 717  
defense as specified in division (H) (2) of that section would 718  
apply in a civil action authorized by division (H) (1) of that 719  
section; 720

(24) The revocation, suspension, restriction, reduction, 721  
or termination of clinical privileges by the United States 722  
department of defense or department of veterans affairs or the 723  
termination or suspension of a certificate of registration to 724  
prescribe drugs by the drug enforcement administration of the 725  
United States department of justice; 726

(25) Termination or suspension from participation in the 727  
medicare or medicaid programs by the department of health and 728  
human services or other responsible agency for any act or acts 729  
that also would constitute a violation of division (B) (2), (3), 730  
(6), (8), or (19) of this section; 731

(26) Impairment of ability to practice according to 732  
acceptable and prevailing standards of care because of habitual 733  
or excessive use or abuse of drugs, alcohol, or other substances 734  
that impair ability to practice. 735

For the purposes of this division, any individual 736  
authorized to practice by this chapter accepts the privilege of 737  
practicing in this state subject to supervision by the board. By 738  
filing an application for or holding a certificate to practice 739  
under this chapter, an individual shall be deemed to have given 740  
consent to submit to a mental or physical examination when 741  
ordered to do so by the board in writing, and to have waived all 742  
objections to the admissibility of testimony or examination 743  
reports that constitute privileged communications. 744

If it has reason to believe that any individual authorized 745  
to practice by this chapter or any applicant for certification 746  
to practice suffers such impairment, the board may compel the 747  
individual to submit to a mental or physical examination, or 748  
both. The expense of the examination is the responsibility of 749  
the individual compelled to be examined. Any mental or physical 750  
examination required under this division shall be undertaken by 751  
a treatment provider or physician who is qualified to conduct 752  
the examination and who is chosen by the board. 753

Failure to submit to a mental or physical examination 754  
ordered by the board constitutes an admission of the allegations 755  
against the individual unless the failure is due to 756  
circumstances beyond the individual's control, and a default and 757  
final order may be entered without the taking of testimony or 758  
presentation of evidence. If the board determines that the 759  
individual's ability to practice is impaired, the board shall 760  
suspend the individual's certificate or deny the individual's 761  
application and shall require the individual, as a condition for 762  
initial, continued, reinstated, or renewed certification to 763  
practice, to submit to treatment. 764

Before being eligible to apply for reinstatement of a 765  
certificate suspended under this division, the impaired 766  
practitioner shall demonstrate to the board the ability to 767  
resume practice in compliance with acceptable and prevailing 768  
standards of care under the provisions of the practitioner's 769  
certificate. The demonstration shall include, but shall not be 770  
limited to, the following: 771

(a) Certification from a treatment provider approved under 772  
section 4731.25 of the Revised Code that the individual has 773  
successfully completed any required inpatient treatment; 774

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(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 the assessments and shall describe the basis for their determination.

The board may reinstate a certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of

patients to receive health care services from that individual; 804

(b) Advertising that the individual will waive the payment 805  
of all or any part of a deductible or copayment that a patient, 806  
pursuant to a health insurance or health care policy, contract, 807  
or plan that covers the individual's services, otherwise would 808  
be required to pay. 809

(29) Failure to use universal blood and body fluid 810  
precautions established by rules adopted under section 4731.051 811  
of the Revised Code; 812

(30) Failure to provide notice to, and receive 813  
acknowledgment of the notice from, a patient when required by 814  
section 4731.143 of the Revised Code prior to providing 815  
nonemergency professional services, or failure to maintain that 816  
notice in the patient's file; 817

(31) Failure of a physician supervising a physician 818  
assistant to maintain supervision in accordance with the 819  
requirements of Chapter 4730. of the Revised Code and the rules 820  
adopted under that chapter; 821

(32) Failure of a physician or podiatrist to enter into a 822  
standard care arrangement with a clinical nurse specialist, 823  
certified nurse-midwife, or certified nurse practitioner with 824  
whom the physician or podiatrist is in collaboration pursuant to 825  
section 4731.27 of the Revised Code or failure to fulfill the 826  
responsibilities of collaboration after entering into a standard 827  
care arrangement; 828

(33) Failure to comply with the terms of a consult 829  
agreement entered into with a pharmacist pursuant to section 830  
4729.39 of the Revised Code; 831

(34) Failure to cooperate in an investigation conducted by 832

the board under division (F) of this section, including failure 833  
to comply with a subpoena or order issued by the board or 834  
failure to answer truthfully a question presented by the board 835  
in an investigative interview, an investigative office 836  
conference, at a deposition, or in written interrogatories, 837  
except that failure to cooperate with an investigation shall not 838  
constitute grounds for discipline under this section if a court 839  
of competent jurisdiction has issued an order that either 840  
quashes a subpoena or permits the individual to withhold the 841  
testimony or evidence in issue; 842

(35) Failure to supervise an oriental medicine 843  
practitioner or acupuncturist in accordance with Chapter 4762. 844  
of the Revised Code and the board's rules for providing that 845  
supervision; 846

(36) Failure to supervise an anesthesiologist assistant in 847  
accordance with Chapter 4760. of the Revised Code and the 848  
board's rules for supervision of an anesthesiologist assistant; 849

(37) Assisting suicide as defined in section 3795.01 of 850  
the Revised Code; 851

(38) Failure to comply with the requirements of section 852  
2317.561 of the Revised Code; 853

(39) Failure to supervise a radiologist assistant in 854  
accordance with Chapter 4774. of the Revised Code and the 855  
board's rules for supervision of radiologist assistants; 856

(40) Performing or inducing an abortion at an office or 857  
facility with knowledge that the office or facility fails to 858  
post the notice required under section 3701.791 of the Revised 859  
Code; 860

(41) Failure to comply with the standards and procedures 861

established in rules under section 4731.054 of the Revised Code 862  
for the operation of or the provision of care at a pain 863  
management clinic; 864

(42) Failure to comply with the standards and procedures 865  
established in rules under section 4731.054 of the Revised Code 866  
for providing supervision, direction, and control of individuals 867  
at a pain management clinic; 868

(43) Failure to comply with the requirements of section 869  
4729.79 or 4731.055 of the Revised Code, unless the state board 870  
of pharmacy no longer maintains a drug database pursuant to 871  
section 4729.75 of the Revised Code; 872

(44) Failure to comply with the requirements of section 873  
2919.171 of the Revised Code or failure to submit to the 874  
department of health in accordance with a court order a complete 875  
report as described in section 2919.171 of the Revised Code; 876

(45) Practicing at a facility that is subject to licensure 877  
as a category III terminal distributor of dangerous drugs with a 878  
pain management clinic classification unless the person 879  
operating the facility has obtained and maintains the license 880  
with the classification; 881

(46) Owning a facility that is subject to licensure as a 882  
category III terminal distributor of dangerous drugs with a pain 883  
management clinic classification unless the facility is licensed 884  
with the classification; 885

(47) Failure to comply with the requirement regarding 886  
maintaining notes described in division (B) of section 2919.191 887  
of the Revised Code or failure to satisfy the requirements of 888  
section 2919.191 of the Revised Code prior to performing or 889  
inducing an abortion upon a pregnant woman; 890

(48) Failure to comply with the requirements in section 891  
3719.061 of the Revised Code before issuing to a minor a 892  
prescription for a controlled substance containing an opioid. 893

(C) Disciplinary actions taken by the board under 894  
divisions (A) and (B) of this section shall be taken pursuant to 895  
an adjudication under Chapter 119. of the Revised Code, except 896  
that in lieu of an adjudication, the board may enter into a 897  
consent agreement with an individual to resolve an allegation of 898  
a violation of this chapter or any rule adopted under it. A 899  
consent agreement, when ratified by an affirmative vote of not 900  
fewer than six members of the board, shall constitute the 901  
findings and order of the board with respect to the matter 902  
addressed in the agreement. If the board refuses to ratify a 903  
consent agreement, the admissions and findings contained in the 904  
consent agreement shall be of no force or effect. 905

A telephone conference call may be utilized for 906  
ratification of a consent agreement that revokes or suspends an 907  
individual's certificate to practice. The telephone conference 908  
call shall be considered a special meeting under division (F) of 909  
section 121.22 of the Revised Code. 910

If the board takes disciplinary action against an 911  
individual under division (B) of this section for a second or 912  
subsequent plea of guilty to, or judicial finding of guilt of, a 913  
violation of section 2919.123 of the Revised Code, the 914  
disciplinary action shall consist of a suspension of the 915  
individual's certificate to practice for a period of at least 916  
one year or, if determined appropriate by the board, a more 917  
serious sanction involving the individual's certificate to 918  
practice. Any consent agreement entered into under this division 919  
with an individual that pertains to a second or subsequent plea 920



of guilty to, or judicial finding of guilt of, a violation of 921  
that section shall provide for a suspension of the individual's 922  
certificate to practice for a period of at least one year or, if 923  
determined appropriate by the board, a more serious sanction 924  
involving the individual's certificate to practice. 925

(D) For purposes of divisions (B) (10), (12), and (14) of 926  
this section, the commission of the act may be established by a 927  
finding by the board, pursuant to an adjudication under Chapter 928  
119. of the Revised Code, that the individual committed the act. 929  
The board does not have jurisdiction under those divisions if 930  
the trial court renders a final judgment in the individual's 931  
favor and that judgment is based upon an adjudication on the 932  
merits. The board has jurisdiction under those divisions if the 933  
trial court issues an order of dismissal upon technical or 934  
procedural grounds. 935

(E) The sealing of conviction records by any court shall 936  
have no effect upon a prior board order entered under this 937  
section or upon the board's jurisdiction to take action under 938  
this section if, based upon a plea of guilty, a judicial finding 939  
of guilt, or a judicial finding of eligibility for intervention 940  
in lieu of conviction, the board issued a notice of opportunity 941  
for a hearing prior to the court's order to seal the records. 942  
The board shall not be required to seal, destroy, redact, or 943  
otherwise modify its records to reflect the court's sealing of 944  
conviction records. 945

(F) (1) The board shall investigate evidence that appears 946  
to show that a person has violated any provision of this chapter 947  
or any rule adopted under it. Any person may report to the board 948  
in a signed writing any information that the person may have 949  
that appears to show a violation of any provision of this 950

chapter or any rule adopted under it. In the absence of bad 951  
faith, any person who reports information of that nature or who 952  
testifies before the board in any adjudication conducted under 953  
Chapter 119. of the Revised Code shall not be liable in damages 954  
in a civil action as a result of the report or testimony. Each 955  
complaint or allegation of a violation received by the board 956  
shall be assigned a case number and shall be recorded by the 957  
board. 958

(2) Investigations of alleged violations of this chapter 959  
or any rule adopted under it shall be supervised by the 960  
supervising member elected by the board in accordance with 961  
section 4731.02 of the Revised Code and by the secretary as 962  
provided in section 4731.39 of the Revised Code. The president 963  
may designate another member of the board to supervise the 964  
investigation in place of the supervising member. No member of 965  
the board who supervises the investigation of a case shall 966  
participate in further adjudication of the case. 967

(3) In investigating a possible violation of this chapter 968  
or any rule adopted under this chapter, or in conducting an 969  
inspection under division (E) of section 4731.054 of the Revised 970  
Code, the board may question witnesses, conduct interviews, 971  
administer oaths, order the taking of depositions, inspect and 972  
copy any books, accounts, papers, records, or documents, issue 973  
subpoenas, and compel the attendance of witnesses and production 974  
of books, accounts, papers, records, documents, and testimony, 975  
except that a subpoena for patient record information shall not 976  
be issued without consultation with the attorney general's 977  
office and approval of the secretary and supervising member of 978  
the board. 979

(a) Before issuance of a subpoena for patient record 980

information, the secretary and supervising member shall 981  
determine whether there is probable cause to believe that the 982  
complaint filed alleges a violation of this chapter or any rule 983  
adopted under it and that the records sought are relevant to the 984  
alleged violation and material to the investigation. The 985  
subpoena may apply only to records that cover a reasonable 986  
period of time surrounding the alleged violation. 987

(b) On failure to comply with any subpoena issued by the 988  
board and after reasonable notice to the person being 989  
subpoenaed, the board may move for an order compelling the 990  
production of persons or records pursuant to the Rules of Civil 991  
Procedure. 992

(c) A subpoena issued by the board may be served by a 993  
sheriff, the sheriff's deputy, or a board employee designated by 994  
the board. Service of a subpoena issued by the board may be made 995  
by delivering a copy of the subpoena to the person named 996  
therein, reading it to the person, or leaving it at the person's 997  
usual place of residence, usual place of business, or address on 998  
file with the board. When serving a subpoena to an applicant for 999  
or the holder of a certificate issued under this chapter, 1000  
service of the subpoena may be made by certified mail, return 1001  
receipt requested, and the subpoena shall be deemed served on 1002  
the date delivery is made or the date the person refuses to 1003  
accept delivery. If the person being served refuses to accept 1004  
the subpoena or is not located, service may be made to an 1005  
attorney who notifies the board that the attorney is 1006  
representing the person. 1007

(d) A sheriff's deputy who serves a subpoena shall receive 1008  
the same fees as a sheriff. Each witness who appears before the 1009  
board in obedience to a subpoena shall receive the fees and 1010

mileage provided for under section 119.094 of the Revised Code. 1011

(4) All hearings, investigations, and inspections of the 1012  
board shall be considered civil actions for the purposes of 1013  
section 2305.252 of the Revised Code. 1014

(5) A report required to be submitted to the board under 1015  
this chapter, a complaint, or information received by the board 1016  
pursuant to an investigation or pursuant to an inspection under 1017  
division (E) of section 4731.054 of the Revised Code is 1018  
confidential and not subject to discovery in any civil action. 1019

The board shall conduct all investigations or inspections 1020  
and proceedings in a manner that protects the confidentiality of 1021  
patients and persons who file complaints with the board. The 1022  
board shall not make public the names or any other identifying 1023  
information about patients or complainants unless proper consent 1024  
is given or, in the case of a patient, a waiver of the patient 1025  
privilege exists under division (B) of section 2317.02 of the 1026  
Revised Code, except that consent or a waiver of that nature is 1027  
not required if the board possesses reliable and substantial 1028  
evidence that no bona fide physician-patient relationship 1029  
exists. 1030

The board may share any information it receives pursuant 1031  
to an investigation or inspection, including patient records and 1032  
patient record information, with law enforcement agencies, other 1033  
licensing boards, and other governmental agencies that are 1034  
prosecuting, adjudicating, or investigating alleged violations 1035  
of statutes or administrative rules. An agency or board that 1036  
receives the information shall comply with the same requirements 1037  
regarding confidentiality as those with which the state medical 1038  
board must comply, notwithstanding any conflicting provision of 1039  
the Revised Code or procedure of the agency or board that 1040

applies when it is dealing with other information in its 1041  
possession. In a judicial proceeding, the information may be 1042  
admitted into evidence only in accordance with the Rules of 1043  
Evidence, but the court shall require that appropriate measures 1044  
are taken to ensure that confidentiality is maintained with 1045  
respect to any part of the information that contains names or 1046  
other identifying information about patients or complainants 1047  
whose confidentiality was protected by the state medical board 1048  
when the information was in the board's possession. Measures to 1049  
ensure confidentiality that may be taken by the court include 1050  
sealing its records or deleting specific information from its 1051  
records. 1052

(6) On a quarterly basis, the board shall prepare a report 1053  
that documents the disposition of all cases during the preceding 1054  
three months. The report shall contain the following information 1055  
for each case with which the board has completed its activities: 1056

(a) The case number assigned to the complaint or alleged 1057  
violation; 1058

(b) The type of certificate to practice, if any, held by 1059  
the individual against whom the complaint is directed; 1060

(c) A description of the allegations contained in the 1061  
complaint; 1062

(d) The disposition of the case. 1063

The report shall state how many cases are still pending 1064  
and shall be prepared in a manner that protects the identity of 1065  
each person involved in each case. The report shall be a public 1066  
record under section 149.43 of the Revised Code. 1067

(G) If the secretary and supervising member determine both 1068  
of the following, they may recommend that the board suspend an 1069

individual's certificate to practice without a prior hearing: 1070

(1) That there is clear and convincing evidence that an 1071  
individual has violated division (B) of this section; 1072

(2) That the individual's continued practice presents a 1073  
danger of immediate and serious harm to the public. 1074

Written allegations shall be prepared for consideration by 1075  
the board. The board, upon review of those allegations and by an 1076  
affirmative vote of not fewer than six of its members, excluding 1077  
the secretary and supervising member, may suspend a certificate 1078  
without a prior hearing. A telephone conference call may be 1079  
utilized for reviewing the allegations and taking the vote on 1080  
the summary suspension. 1081

The board shall issue a written order of suspension by 1082  
certified mail or in person in accordance with section 119.07 of 1083  
the Revised Code. The order shall not be subject to suspension 1084  
by the court during pendency of any appeal filed under section 1085  
119.12 of the Revised Code. If the individual subject to the 1086  
summary suspension requests an adjudicatory hearing by the 1087  
board, the date set for the hearing shall be within fifteen 1088  
days, but not earlier than seven days, after the individual 1089  
requests the hearing, unless otherwise agreed to by both the 1090  
board and the individual. 1091

Any summary suspension imposed under this division shall 1092  
remain in effect, unless reversed on appeal, until a final 1093  
adjudicative order issued by the board pursuant to this section 1094  
and Chapter 119. of the Revised Code becomes effective. The 1095  
board shall issue its final adjudicative order within seventy- 1096  
five days after completion of its hearing. A failure to issue 1097  
the order within seventy-five days shall result in dissolution 1098

of the summary suspension order but shall not invalidate any 1099  
subsequent, final adjudicative order. 1100

(H) If the board takes action under division (B) (9), (11), 1101  
or (13) of this section and the judicial finding of guilt, 1102  
guilty plea, or judicial finding of eligibility for intervention 1103  
in lieu of conviction is overturned on appeal, upon exhaustion 1104  
of the criminal appeal, a petition for reconsideration of the 1105  
order may be filed with the board along with appropriate court 1106  
documents. Upon receipt of a petition of that nature and 1107  
supporting court documents, the board shall reinstate the 1108  
individual's certificate to practice. The board may then hold an 1109  
adjudication under Chapter 119. of the Revised Code to determine 1110  
whether the individual committed the act in question. Notice of 1111  
an opportunity for a hearing shall be given in accordance with 1112  
Chapter 119. of the Revised Code. If the board finds, pursuant 1113  
to an adjudication held under this division, that the individual 1114  
committed the act or if no hearing is requested, the board may 1115  
order any of the sanctions identified under division (B) of this 1116  
section. 1117

(I) The certificate to practice issued to an individual 1118  
under this chapter and the individual's practice in this state 1119  
are automatically suspended as of the date of the individual's 1120  
second or subsequent plea of guilty to, or judicial finding of 1121  
guilt of, a violation of section 2919.123 of the Revised Code, 1122  
or the date the individual pleads guilty to, is found by a judge 1123  
or jury to be guilty of, or is subject to a judicial finding of 1124  
eligibility for intervention in lieu of conviction in this state 1125  
or treatment or intervention in lieu of conviction in another 1126  
jurisdiction for any of the following criminal offenses in this 1127  
state or a substantially equivalent criminal offense in another 1128  
jurisdiction: aggravated murder, murder, voluntary manslaughter, 1129

felonious assault, kidnapping, rape, sexual battery, gross 1130  
sexual imposition, aggravated arson, aggravated robbery, or 1131  
aggravated burglary. Continued practice after suspension shall 1132  
be considered practicing without a certificate. 1133

The board shall notify the individual subject to the 1134  
suspension by certified mail or in person in accordance with 1135  
section 119.07 of the Revised Code. If an individual whose 1136  
certificate is automatically suspended under this division fails 1137  
to make a timely request for an adjudication under Chapter 119. 1138  
of the Revised Code, the board shall do whichever of the 1139  
following is applicable: 1140

(1) If the automatic suspension under this division is for 1141  
a second or subsequent plea of guilty to, or judicial finding of 1142  
guilt of, a violation of section 2919.123 of the Revised Code, 1143  
the board shall enter an order suspending the individual's 1144  
certificate to practice for a period of at least one year or, if 1145  
determined appropriate by the board, imposing a more serious 1146  
sanction involving the individual's certificate to practice. 1147

(2) In all circumstances in which division (I)(1) of this 1148  
section does not apply, enter a final order permanently revoking 1149  
the individual's certificate to practice. 1150

(J) If the board is required by Chapter 119. of the 1151  
Revised Code to give notice of an opportunity for a hearing and 1152  
if the individual subject to the notice does not timely request 1153  
a hearing in accordance with section 119.07 of the Revised Code, 1154  
the board is not required to hold a hearing, but may adopt, by 1155  
an affirmative vote of not fewer than six of its members, a 1156  
final order that contains the board's findings. In that final 1157  
order, the board may order any of the sanctions identified under 1158  
division (A) or (B) of this section. 1159



(K) Any action taken by the board under division (B) of 1160  
this section resulting in a suspension from practice shall be 1161  
accompanied by a written statement of the conditions under which 1162  
the individual's certificate to practice may be reinstated. The 1163  
board shall adopt rules governing conditions to be imposed for 1164  
reinstatement. Reinstatement of a certificate suspended pursuant 1165  
to division (B) of this section requires an affirmative vote of 1166  
not fewer than six members of the board. 1167

(L) When the board refuses to grant a certificate to an 1168  
applicant, revokes an individual's certificate to practice, 1169  
refuses to register an applicant, or refuses to reinstate an 1170  
individual's certificate to practice, the board may specify that 1171  
its action is permanent. An individual subject to a permanent 1172  
action taken by the board is forever thereafter ineligible to 1173  
hold a certificate to practice and the board shall not accept an 1174  
application for reinstatement of the certificate or for issuance 1175  
of a new certificate. 1176

(M) Notwithstanding any other provision of the Revised 1177  
Code, all of the following apply: 1178

(1) The surrender of a certificate issued under this 1179  
chapter shall not be effective unless or until accepted by the 1180  
board. A telephone conference call may be utilized for 1181  
acceptance of the surrender of an individual's certificate to 1182  
practice. The telephone conference call shall be considered a 1183  
special meeting under division (F) of section 121.22 of the 1184  
Revised Code. Reinstatement of a certificate surrendered to the 1185  
board requires an affirmative vote of not fewer than six members 1186  
of the board. 1187

(2) An application for a certificate made under the 1188  
provisions of this chapter may not be withdrawn without approval 1189

of the board. 1190

(3) Failure by an individual to renew a certificate of 1191  
registration in accordance with this chapter shall not remove or 1192  
limit the board's jurisdiction to take any disciplinary action 1193  
under this section against the individual. 1194

(4) At the request of the board, a certificate holder 1195  
shall immediately surrender to the board a certificate that the 1196  
board has suspended, revoked, or permanently revoked. 1197

(N) Sanctions shall not be imposed under division (B) (28) 1198  
of this section against any person who waives deductibles and 1199  
copayments as follows: 1200

(1) In compliance with the health benefit plan that 1201  
expressly allows such a practice. Waiver of the deductibles or 1202  
copayments shall be made only with the full knowledge and 1203  
consent of the plan purchaser, payer, and third-party 1204  
administrator. Documentation of the consent shall be made 1205  
available to the board upon request. 1206

(2) For professional services rendered to any other person 1207  
authorized to practice pursuant to this chapter, to the extent 1208  
allowed by this chapter and rules adopted by the board. 1209

(O) Under the board's investigative duties described in 1210  
this section and subject to division (F) of this section, the 1211  
board shall develop and implement a quality intervention program 1212  
designed to improve through remedial education the clinical and 1213  
communication skills of individuals authorized under this 1214  
chapter to practice medicine and surgery, osteopathic medicine 1215  
and surgery, and podiatric medicine and surgery. In developing 1216  
and implementing the quality intervention program, the board may 1217  
do all of the following: 1218

(1) Offer in appropriate cases as determined by the board	1219
an educational and assessment program pursuant to an	1220
investigation the board conducts under this section;	1221
(2) Select providers of educational and assessment	1222
services, including a quality intervention program panel of case	1223
reviewers;	1224
(3) Make referrals to educational and assessment service	1225
providers and approve individual educational programs	1226
recommended by those providers. The board shall monitor the	1227
progress of each individual undertaking a recommended individual	1228
educational program.	1229
(4) Determine what constitutes successful completion of an	1230
individual educational program and require further monitoring of	1231
the individual who completed the program or other action that	1232
the board determines to be appropriate;	1233
(5) Adopt rules in accordance with Chapter 119. of the	1234
Revised Code to further implement the quality intervention	1235
program.	1236
An individual who participates in an individual	1237
educational program pursuant to this division shall pay the	1238
financial obligations arising from that educational program.	1239
<b>Sec. 4731.227.</b> An individual authorized to practice	1240
medicine and surgery or osteopathic medicine and surgery may use	1241
alternative medical treatments if the individual has provided	1242
the information necessary to obtain informed consent from the	1243
patient and the treatment meets the standards enforced by the	1244
state medical board pursuant to section 4731.22 of the Revised	1245
Code and any rules adopted by the board.	1246
As used in this section, "alternative medical treatment"	1247

means care that is complementary to or different from 1248  
conventional medical care but is reasonable when the benefits 1249  
and risks of the alternative medical treatment and the 1250  
conventional medical care are compared. Alternative medical 1251  
treatment does not include treatment with an investigational 1252  
drug, product, or device under section 4731.96 of the Revised 1253  
Code. 1254

Sec. 4731.96. (A) As used in this section: 1255

(1) "Drug" has the same meaning as in section 4729.01 of 1256  
the Revised Code. 1257

(2) "Investigational drug, product, or device" means a 1258  
drug, product, or device that has successfully completed phase 1259  
one of United States food and drug administration clinical 1260  
trials and remains under clinical trial, but has not been 1261  
approved for general use by the United States food and drug 1262  
administration. "Investigational drug, product, or device" does 1263  
not include controlled substances in schedule I, as established 1264  
pursuant to section 3719.41 of the Revised Code, and as amended. 1265

(3) "Product" means a biological product, other than a 1266  
drug, that is made from a natural human, animal, or 1267  
microorganism source and is intended to treat a disease or 1268  
medical condition. 1269

(4) "Device" means a medical device that is intended for 1270  
use in the diagnosis or treatment of a disease or medical 1271  
condition. 1272

(5) "Terminal illness" means a condition that satisfies 1273  
all of the following criteria: 1274

(a) The condition is caused by a disease, illness, or 1275  
injury from which an individual is unlikely to recover if left 1276

untreated; 1277

(b) The condition is irreversible and incurable through a method of treatment approved by the United States food and drug administration; 1278  
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(c) In accordance with reasonable medical standards and a reasonable degree of medical certainty, it appears that the condition is likely to cause death within twelve months. 1281  
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(6) "Treating physician" means the physician or physicians primarily responsible for providing medical care and treating an eligible patient's terminal illness. "Treating physician" does not include the patient's primary care physician unless that physician is treating the patient's terminal illness and no other physician is primarily responsible for treating the terminal illness. 1284  
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(B) An individual is an eligible patient if all of the following conditions are met: 1291  
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(1) The individual has a terminal illness. 1293

(2) The individual, as determined by the individual's treating physician, has considered all treatment options for the terminal illness that are approved by the United States food and drug administration and determined that there are no satisfactory or comparable approved treatments and that the risk from the investigational drug, product, or device is no greater than the probable risk from not treating the terminal illness. 1294  
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(3) The individual's treating physician recommends the use of the investigational drug, product, or device and agrees to either administer or personally furnish it or has issued a prescription to the individual for the investigational drug, product, or device. 1301  
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(4) The treating physician includes documentation in the patient's medical record that all of the foregoing conditions have been met. 1306  
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(C) (1) A treating physician may treat an eligible patient with an investigational drug, product, or device after securing the patient's informed consent in a signed statement. If the patient is a minor or lacks the capacity to consent, the informed consent must be obtained from a parent, guardian, or other person legally responsible for the patient. 1309  
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(2) To secure informed consent, the treating physician must do all of the following: 1315  
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(a) Record all of the following in the document that is to be signed: 1317  
1318

(i) An explanation of the approved treatment options for the terminal illness from which the patient suffers; 1319  
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(ii) The specific proposed investigational drug, product, or device; 1321  
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(iii) The potentially best and worst outcomes of using the investigational drug, product, or device with a realistic description of the most likely outcome, including the possibility that new, unanticipated, different, or worse symptoms might result, and that death could be hastened by the investigational drug, product, or device; 1323  
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(iv) An explanation that the manufacturer of the investigational drug, product, or device may hold the patient liable for all expenses that arise from the patient's use of the investigational drug, product, or device. 1329  
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(b) Have the individual giving consent sign the document 1333

in the conscious presence of a competent witness; 1334

(c) Have the witness also sign the document and attest 1335  
that the individual giving consent appeared to do all of the 1336  
following: 1337

(i) Concur with the treating physician in believing that 1338  
all approved treatment options would be unlikely to prolong the 1339  
patient's life; 1340

(ii) Understand the risks involved with using the 1341  
investigational drug, product, or device; 1342

(iii) Willingly desire to use the investigational drug, 1343  
product, or device to treat the terminal illness. 1344

(D) Except for actions constituting willful or wanton 1345  
misconduct, a physician who recommends or treats an eligible 1346  
patient with an investigational drug, product, or device in 1347  
compliance with this section is not liable for or subject to any 1348  
of the following for an action or omission related to treatment 1349  
with the investigational drug, product, or device: damages in 1350  
any civil action, prosecution in any criminal proceeding, or 1351  
professional disciplinary action. 1352

(E) Nothing in this section shall be interpreted as 1353  
requiring any insurer, government health care program, or other 1354  
provider of health care coverage to provide coverage for charges 1355  
incurred from the use of any investigational drug, product, or 1356  
device. 1357

**Section 2.** That existing sections 1739.05, 4729.291, 1358  
4729.51, 4729.57, 4731.22, and 4731.227 of the Revised Code are 1359  
hereby repealed. 1360

**Section 3.** Sections 1739.05 and 1751.691 of the Revised 1361

Code, as amended or enacted by this act, apply only to policies,	1362
contracts, and agreements that are delivered, issued for	1363
delivery, or renewed in this state on or after January 1, 2016.	1364
Section 3923.851 of the Revised Code, as enacted by this act,	1365
applies only to policies of sickness and accident insurance	1366
delivered, issued for delivery, or renewed in this state and to	1367
public employee benefit plans that are established or modified	1368
in this state, on or after January 1, 2016.	1369