As Introduced

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

A BILL

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

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

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

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

(1) The arrangement has and maintains a minimum enrollment

of three hundred employees of two or more employers.

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

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

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

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

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

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

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

(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.

(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:

(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;

(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.

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

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

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

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

(C) If an investigational drug, product, or device recipient dies while being treated with an investigational drug,

product, or device, the recipient's estate, devisees, and heirs shall not be liable for any outstanding costs related to treating the recipient or the recipient's lack of health insurance coverage under division (B) of this section.

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

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

(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.

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

(1) The policy or plan 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;

(2)(a) The policy or plan 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised Code;

(d) A college-preparatory boarding school established under Chapter 3328. of the Revised Code;

(e) A chartered or nonchartered nonpublic school.

(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:

(a) Except as provided in division (B)(2)(a) of this section, a licensed health professional authorized to prescribe drugs;

(b) An optometrist licensed under Chapter 4725. of the Revised Code who holds a topical ocular pharmaceutical agents certificate;

(c) A registered wholesale distributor of dangerous drugs;

(d) A manufacturer of dangerous drugs;

(e) Subject to division (B)(3) of this section, a licensed terminal distributor of dangerous drugs;

(f) Carriers or warehouses for the purpose of carriage or storage;

(g) Terminal or wholesale distributors of dangerous drugs who are not engaged in the sale of dangerous drugs within this state;

(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

the Revised Code, but only with respect to insulin that will be used 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;

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

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

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

individual is a licensed health professional authorized to prescribe drugs;

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

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

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

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

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

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

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

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

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

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

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

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

(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 nationally recognized S.C.U.B.A. diving certifying organization approved by the state board of pharmacy in rule, but only to the extent that the individual possesses medical oxygen or personally supplies medical oxygen for the purpose of emergency care or treatment at the scene of a diving emergency.

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

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

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

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

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

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

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

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

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

(F) Nothing in this section shall be construed to

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

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

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

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

(2) Violating any rule of the board;

(3) Violating any provision of this chapter;

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

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

(6) Falsely or fraudulently promoting to the public a

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

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

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

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

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

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

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

available to the board on request.

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

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

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

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

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

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

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

The manufacturer may do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Willfully betraying a professional confidence.

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

(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 this state, regardless of the jurisdiction in which the act was committed;

(11) 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 misdemeanor committed in the course of practice;

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

(13) 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 misdemeanor involving moral turpitude;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Before being eligible to apply for reinstatement of a certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's certificate. The demonstration 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 any required inpatient treatment;

(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;

(b) Advertising that the individual will waive 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.

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

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

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

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

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

(34) Failure to cooperate in an investigation conducted by

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

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

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

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

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

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

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

(41) Failure to comply with the standards and procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Before issuance of a subpoena for patient record

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

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

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

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

mileage provided for under section 119.094 of the Revised Code.

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

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

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

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

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

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

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

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

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

(d) The disposition of the case.

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

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

individual's certificate to practice without a prior hearing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the board.

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

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

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

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

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

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

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

Sec. 4731.227. An individual authorized to practice medicine and surgery or osteopathic medicine and surgery may use alternative medical treatments if the individual has provided the information necessary to obtain informed consent from the patient and the treatment meets the standards enforced by the state medical board pursuant to section 4731.22 of the Revised Code and any rules adopted by the board.

As used in this section, "alternative medical treatment"

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

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

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

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

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

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

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

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

untreated;

(b) The condition is irreversible and incurable through a method of treatment approved by the United States food and drug administration;

(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.

(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.

(B) An individual is an eligible patient if all of the following conditions are met:

(1) The individual has a terminal illness.

(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.

(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.

(4) The treating physician includes documentation in the patient's medical record that all of the foregoing conditions have been met.

(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.

(2) To secure informed consent, the treating physician must do all of the following:

(a) Record all of the following in the document that is to be signed:

(i) An explanation of the approved treatment options for the terminal illness from which the patient suffers;

(ii) The specific proposed investigational drug, product, or device;

(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;

(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.

(b) Have the individual giving consent sign the document

in the conscious presence of a competent witness;

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

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

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

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

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

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

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

Section 3. Sections 1739.05 and 1751.691 of the Revised

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