
MEDICAL BOARD

- Permits a physician assistant to personally furnish supplies of specified drugs and therapeutic devices at an employer-based health care clinic.
- Recognizes the authority of a medical practitioner, health care institution, or health care payer to decline to perform, participate in, or pay for any health care service that violates the practitioner's, institution's, or payer's conscience.
- Allows a physician to delegate the use of light-based medical devices for hair removal to specified persons, including cosmetic therapists, under certain circumstances.
- Creates the Massage Therapy Advisory Council to make recommendations to the State Medical Board regarding issues affecting the practice of massage therapy.

Physician assistants personally furnishing drugs

(R.C. 4730.43)

The act permits a physician assistant with prescriptive authority to personally furnish supplies of certain drugs and therapeutic devices at an employer-based clinic that provides health care services to the employer's employees. Under prior law, a physician assistant is authorized to personally furnish only at a health department operated by a board of health, federally funded comprehensive primary care clinic, or a nonprofit health care clinic or program. The drugs and devices that may be personally furnished under the act at an employer clinic are the same as those that may be personally furnished at other locations under continuing law: antibiotics, antifungals, scabicides, contraceptives, prenatal vitamins, antihypertensives, drugs and devices used in the treatment of diabetes, drugs and devices used in the treatment of asthma, and drugs used in the treatment of dyslipidemia.

Conscience clause

(R.C. 4743.10)

The act specifies that a medical practitioner, health care institution, or health care payer has the freedom to decline to perform, participate in, or pay for any health care service that violates the practitioner's, institution's, or payer's conscience as informed by the moral, ethical, or religious beliefs or principles held by the practitioner, institution, or payer. It further specifies that exercising the right of conscience is limited to conscience-based objections to a particular health care service.

Definitions

Medical practitioner means any person who facilitates or participates in the provision of health care services, including nursing, physician services, counseling and social work, psychological and psychiatric services, research services, surgical services, laboratory services, and the provision of pharmaceuticals and may include any of the following: any student or faculty at a medical, nursing, mental health, or counseling institution of higher education or an

allied health professional, paraprofessional, or employee or contractor of a health care institution.

Health care service means medical care provided to a patient at any time over the entire course of the patient's treatment and may include one or more of the following: testing; diagnosis; referral; dispensing or administering a drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; record making procedures and notes related to treatment; preparation for or performance of a surgery or procedure; or any other care or service performed or provided by any medical practitioner.

Participation in a health care service means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing, any health care service.

The act does not define a health care institution or health care payer.

Actions in case of a conflict

Under the act, whenever a situation arises in which a requested course of treatment includes a particular health care service that conflicts with a medical practitioner's moral, ethical, or religious beliefs or convictions, the practitioner must be excused from participating in the particular health care service.

And when the practitioner becomes aware of the conflict, he or she must notify his or her supervisor, if applicable, and request to be excused from participating in the particular health care service. When possible and when the practitioner is willing, he or she must seek to transfer the patient to a colleague who will provide the requested health care service.

If participation in a transfer of care for a particular health care service violates the practitioner's beliefs or convictions or a willing colleague is not identified, the patient must be notified and provided the opportunity to seek an alternate medical practitioner. Upon a patient's request, the patient's medical records must be promptly released to the patient.

The medical practitioner is responsible for providing all appropriate health care services, other than the particular health care service that conflicts with the medical practitioner's beliefs or convictions, until another medical practitioner or facility is available.

The act does not outline any actions to be taken in the event the moral, ethical, or religious beliefs of an institution or payer conflict with a particular health care service.

Liability

A medical practitioner, health care institution, or health care payer is not civilly, criminally, or administratively liable for exercising the practitioner's, institution's, or payer's right of conscience. Moreover, an institution is not civilly, criminally, or administratively liable for the exercise of conscience rights by a practitioner employed by, under contract with, or granted admitting privileges by the institution.

Discrimination

The act prohibits a medical practitioner, health care institution, or health care payer from being discriminated against or suffering any other adverse action as a result of declining to participate in or pay for a particular health service on the basis of conscience.

It also prohibits a medical practitioner from being discriminated against or suffering any adverse action for disclosing any information that the practitioner reasonably believes evinces the following:

- Any violation of the act's provisions or any other law;
- Any violation of any standard of care or other ethical guidelines for the provision of any health care service;
- Gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Violations

In the event of a violation of the act's provision, the act authorizes a medical practitioner, health care institution, or health care payer to bring a civil action for damages, injunctive relief, or any other appropriate relief.

Upon a finding of a violation, a court must award treble damages as well as reasonable costs and attorney's fees. A court considering the civil action also may award injunctive relief, including reinstatement of a medical practitioner to his or her previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer.

EMTALA

The act specifies that its provisions are not to be construed to override the requirement under the federal Emergency Medical Treatment and Labor Act (EMTALA)¹⁰⁶ to provide emergency medical treatment to all patients.

Health care payer contracts

With respect to the right of a health care payer to decline to pay for a health care service as established under the act, the payer's right to decline applies only to payments and health care services for which a contract has been entered into between the payer and policyholder on or after September 30, 2021.

Use of light-based medical devices for hair removal

(R.C. 4731.33)

The act allows a physician to delegate the application of light-based medical devices for the purpose of hair removal to specified persons under certain circumstances. Current

¹⁰⁶ 42 U.S.C. 1395dd.

administrative rules adopted by the State Medical Board allow for physician delegation of light-based medical devices, including for the purpose of hair removal (see “**Background on cosmetic therapist licensure**,” below). The act largely mirrors provisions from a new rule recently adopted by the Board, except that it exempts certain persons from the act’s education and training requirements who are not exempt under the new rule, [O.A.C. 4731-18-03](#).

The act allows a physician to delegate the application of light-based medical devices for the purpose of hair removal if all of the following conditions are met:

- The light-based medical device has been specifically cleared or approved by the U.S. Food and Drug Administration for the removal of hair from the human body;
- The use of the light-based medical device for the purpose of hair removal is within the physician’s normal course of practice and expertise;
- The physician has seen and evaluated the patient to determine whether the proposed application of the specific light-based medical device is appropriate;
- The physician has seen and evaluated the patient following the initial application of the specific light-based medical device, but before any continuation of treatment, to determine that the patient responded well to that initial application;
- The person to whom the delegation is made is one of the following:
 - A person who is licensed in Ohio as a physician assistant with whom the physician has an effective supervision agreement;
 - A person who was licensed as a cosmetic therapist on April 11, 2021 (see “**Background on cosmetic therapist licensure**,” below);
 - A person who has completed a cosmetic therapy course of instruction for a minimum of 750 clock hours and received a passing score on the Certified Laser Hair Removal Professional Examination administered by the Society for Clinical and Medical Hair Removal;
 - A person who is licensed in Ohio as a registered nurse or licensed practical nurse.

Delegation to a cosmetic therapist – education and training

For delegation to a person who was licensed as a cosmetic therapist on April 11, 2021, or who has the cosmetic therapy training and education described above, the act requires the physician to ensure that the person to whom the delegation is made has received adequate education and training to provide the level of skill and care necessary, including all of the following:

- The person has completed eight hours of basic education that includes specified topics related to the use light-based medical devices;
- The person has observed 15 procedures for each specific type of light-based medical device procedure for hair removal that the person will perform under the delegation

(a physician who uses the specific light-based medical device procedure in the physician's normal course of practice and expertise must perform the procedures).

- The person must perform at least 20 procedures under the direct physical oversight of the physician on each specific type of light-based medical device procedure for hair removal delegated (the physician overseeing the performance of these procedures must use the specific light-based medical device procedure within the physician's normal course of practice and expertise).

Each delegating physician and delegate must document and retain satisfactory completion of the requirements discussed above. The basic education requirement only needs to be completed once by the delegate regardless of the number of types of specific light-based medical device procedures for hair removal delegated and the number of delegating physicians. The procedure observation and performance requirements described above must be completed by the delegate once for each specific type of light-based medical device procedure for hair removal delegated regardless of the number of delegating physicians.

Exemption from education and training requirements

The act exempts the following delegates from the education and training requirements discussed above:

- A person who, before September 30, 2021, has been applying a light-based medical device for hair removal for at least two years through a lawful delegation by a physician;
- A person who was licensed as a cosmetic therapist on April 11, 2021, if the person was authorized to use a light-based medical device under that license;
- A person who is licensed in Ohio as a physician assistant, registered nurse, or a licensed practical nurse.

Physician supervision

Delegation to a physician assistant under the act must meet continuing law requirements regarding physician assistant supervision.¹⁰⁷ For the other types of delegates, cosmetic therapists, and nurses, the act requires that the physician provide on-site supervision at all times that the delegate is applying the light-based medical device. A physician is prohibited from supervising more than two delegates who are not physician assistants at the same time.

However, the act allows a physician to provide off-site supervision to a cosmetic therapist delegate when the light-based medical device is applied for the purpose of hair removal to an established patient if the cosmetic therapist meets all of the following criteria:

¹⁰⁷ R.C. 4730.21, not in the act.

- The cosmetic therapist has successfully completed a course in the use of light-based medical devices for the purpose of hair removal that has been approved by the delegating physician;
- The course consisted of at least 50 hours of training, at least 30 hours of which was clinical experience;
- The cosmetic therapist has worked under the on-site supervision of the delegating physician for a sufficient period of time that the physician is satisfied that the cosmetic therapist is capable of competently performing the service with off-site supervision.

The cosmetic therapist must maintain documentation of the successful completion of the required training.

The act requires a delegate to immediately report to the supervising physician any clinically significant side effect following the application of the light-based medical device or any failure of the treatment to progress as was expected at the time the delegation was made. The delegating physician must see and personally evaluate a patient who has experienced a clinically significant side effect or whose treatment is not progressing as expected as soon as practicable.

Failure to comply with requirements

The act prohibits a physician from failing to comply with the delegation and supervision requirements discussed above. A violation constitutes 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 (a reason for discipline to be imposed on a physician by the Board under continuing law).

The act also prohibits a physician from delegating the application of light-based medical devices for the purpose of hair removal to a person who is not eligible under this act. A violation of this prohibition constitutes violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate the continuing law prohibition against the unlawful practice of medicine (a reason for discipline to be imposed on a physician by the Board under continuing law).

The act prohibits a cosmetic therapist to whom a delegation is made from failing to comply with the act's requirements for off-site physician supervision or side effect reporting. A violation of this prohibition constitutes the unauthorized practice of medicine under continuing law. Under continuing law, whoever violates the prohibition against the unauthorized practice of medicine is guilty of a fifth degree felony on a first offense and fourth degree felony on each subsequent offense.¹⁰⁸

The act prohibits a physician assistant from failing to comply the side-effect reporting requirement discussed above. A violation of the prohibition constitutes a departure from, or

¹⁰⁸ R.C. 4731.41 and 4731.99, not in the act.

failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established (a reason for discipline to be imposed on a physician assistant by the Board under continuing law).¹⁰⁹

Background on cosmetic therapist licensure

H.B. 442 of the 133rd General Assembly, which took effect on April 12, 2021, eliminated the Board's authority to license cosmetic therapists and the practice of cosmetic therapy. Before H.B. 442 took effect, a cosmetic therapist licensed by the Board was allowed to use light-based medical devices for the purpose of hair removal under the delegation of a physician under certain circumstances.

Under an administrative rule adopted by the Board before the elimination of cosmetic therapist licensure, the use of a light-based medical device, including for the purpose of hair removal, is considered to be the practice of medicine.¹¹⁰ As discussed above, the unauthorized practice of medicine is prohibited under continuing law and whoever violates that prohibition is subject to criminal penalties.

After the enactment of H.B. 442, the Board adopted an emergency administrative rule, effective beginning April 9, 2021, and a permanent rule effective beginning July 31, 2021, to allow physician delegation of the use of a light-based medical device for hair removal to a person who was a licensed cosmetic therapist on April 11, 2021. However, the rule does not allow physician delegation to a person who has cosmetic therapy education and training, but did not hold a cosmetic therapist license on April 11, 2021.¹¹¹

Massage Therapy Advisory Council

(R.C. 4731.152)

The act requires the State Medical Board to appoint a Massage Therapy Advisory Council to advise the Board on issues relating to the practice of massage therapy. The advisory council must consist of not more than seven individuals knowledgeable in the area of massage therapy, including at least one physician who is a member of the State Medical Board, one massage therapy educator, and one individual who is not a member of any health care profession to represent consumers. The American Massage Therapy Association and the Associated Bodywork and Massage Professionals, or their successor organizations, may each nominate not more than three individuals for consideration by the Board. A majority of the council members must be licensed massage therapists engaged in active practice.

The Board must make initial appointments to the advisory council before December 30, 2021. Initial members serve one-, two-, or three-year terms as selected by the Board.

¹⁰⁹ R.C. 4730.25, not in the act.

¹¹⁰ Former O.A.C. 4731-18-02.

¹¹¹ [O.A.C. 4731-18-03](#).

Subsequent members serve three-year terms. Members serve without compensation but may be reimbursed for expenses incurred while performing official duties.

The advisory council must meet at least four times a year and may submit recommendations to the Board regarding issues affecting the practice of massage therapy, including requirements for licensure and renewal, the administration and enforcement of the laws governing the practice of massage therapy, standards for approval of educational programs, standards of practice and ethical conduct, and the safe and effective practice of massage therapy, including scope of practice and minimal standards of care.