



## Ohio Revised Code

### Section 4725.23 Investigations - confidentiality of information.

Effective: July 1, 2009

Legislation: House Bill 525 - 127th General Assembly

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(A) The state board of optometry shall investigate evidence that appears to show that a person has violated any provision of sections 4725.01 to 4725.34 of the Revised Code or any rule adopted under those sections. Investigations of alleged violations shall be supervised by the member of the board appointed by the board to act as the supervising member of investigations. The supervising member shall not participate in the final vote that occurs in an adjudication of the case.

(B) In investigating a possible violation, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony. A subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary of the board and the board's supervising member of investigations. 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 sections 4725.01 to 4725.34 of the Revised Code or any rule adopted under those sections 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.

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.

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. When the person being served is an optometrist licensed under this chapter, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the optometrist refuses to accept delivery.



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.

(C) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations 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.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with other licensing boards and governmental agencies that are investigating alleged professional misconduct and with law enforcement agencies and other governmental agencies that are investigating or prosecuting alleged criminal offenses. A board or agency that receives the information shall comply with the same requirements regarding confidentiality as those with which the state board of optometry must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the board or agency that applies when the board or agency is dealing with other information in its possession. The information may be admitted into evidence in a criminal trial 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 persons whose confidentiality was protected by the state board of optometry 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.