



Ohio Revised Code Section 4761.09 Disciplinary actions.

Effective: January 21, 2018

Legislation: House Bill 49 - 132nd General Assembly

(A) The state medical board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place a license or limited permit holder on probation, on any of the following grounds:

- (1) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for an offense involving moral turpitude or of a felony, in which case a certified copy of the court record shall be conclusive evidence of the matter;
- (2) Violating any provision of this chapter or an order or rule of the board;
- (3) Assisting another person in that person's violation of any provision of this chapter or an order or rule of the board;
- (4) Obtaining a license or limited permit by means of fraud, false or misleading representation, or concealment of material facts or making any other material misrepresentation to the board;
- (5) Being guilty of negligence or gross misconduct in the practice of respiratory care;
- (6) Violating the standards of ethical conduct adopted by the board, in the practice of respiratory care;
- (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- (8) Using any dangerous drug, as defined in section 4729.01 of the Revised Code, or alcohol to the extent that the use impairs the ability to practice respiratory care at an acceptable level of competency;



- (9) Practicing respiratory care while mentally incompetent;
- (10) Accepting commissions, rebates, or other forms of remuneration for patient referrals;
- (11) Practicing in an area of respiratory care for which the person is clearly untrained or incompetent or practicing in a manner that conflicts with section 4761.17 of the Revised Code;
- (12) Employing, directing, or supervising a person who is not authorized to practice respiratory care under this chapter in the performance of respiratory care procedures;
- (13) Misrepresenting educational attainments or authorized functions for the purpose of obtaining some benefit related to the practice of respiratory care;
- (14) Assisting suicide as defined in section 3795.01 of the Revised Code.

Before the board may take any action under this section, other than issuance of a summary suspension order under division (C) of this section, the executive director of the board shall prepare and file written charges with the board. Disciplinary actions taken by the board under 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 to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by 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 effect.

(B) If the board orders a license or limited permit holder placed on probation, the order shall be accompanied by a written statement of the conditions under which the person may be restored to practice.

The person may reapply to the board for original issuance of a license after one year following the date the license was denied.

Except as otherwise provided in division (D) of this section, a person may apply to the board for the



reinstatement of a license or limited permit after one year following the date of suspension or refusal to renew. The board may accept or refuse the application for reinstatement and may require that the applicant pass a reexamination as a condition of eligibility for reinstatement.

(C) If the president and secretary of the board determine that there is clear and convincing evidence that a license or limited permit holder has committed an act that is grounds for board action under division (A) of this section and that continued practice by the license or permit holder presents a danger of immediate and serious harm to the public, the president and secretary may recommend that the board suspend the license or limited permit without a prior hearing. The president and secretary shall submit in writing to the board the allegations causing them to recommend the suspension.

On review of the allegations, the board, by a vote of not less than seven of its members, may suspend a license or limited permit without a prior hearing. The board may review the allegations and vote on the suspension by a telephone conference call.

If the board votes to suspend a license or limited permit under this division, the board shall issue a written order of summary suspension to the license or limited permit holder in accordance with section 119.07 of the Revised Code. If the license or limited permit holder requests a hearing by the board, the board shall conduct the hearing in accordance with Chapter 119. of the Revised Code. Notwithstanding section 119.12 of the Revised Code, a court of common pleas shall not grant a suspension of the board's order of summary suspension pending determination of an appeal filed under that section.

Any order of summary suspension issued under this division shall remain in effect until a final adjudication order issued by the board pursuant to division (A) of this section becomes effective. The board shall issue its final adjudication order regarding an order of summary suspension issued under this division not later than sixty days after completion of its hearing. Failure to issue the order within sixty days shall result in immediate dissolution of the suspension order, but shall not invalidate any subsequent, final adjudication order.

(D) For purposes of this division, any individual who holds a license or permit issued under this chapter, or applies for a license or permit to practice respiratory care, is 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.

For purposes of division (A)(8) of this section, if the board has reason to believe that any individual who holds a license or permit issued under this chapter or any applicant for a license or permit 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 qualified to conduct such examination and 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 license or permit or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure, to submit to treatment.

Before being eligible to apply for reinstatement of a license or permit suspended under this division, the respiratory care professional shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care. The demonstration shall include the following:

- (1) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;
- (2) Evidence of continuing full compliance with an aftercare contract or consent agreement;
- (3) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for their determination.



The board may reinstate a license or permit suspended under this division after such demonstration and after the individual has entered into a written consent agreement.

When the impaired respiratory care professional resumes practice, the board shall require continued monitoring of the respiratory care professional. The monitoring shall include 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 falsification stating whether the respiratory care professional has maintained sobriety.