



## Ohio Revised Code

### Section 4762.13 Revocation or suspension of license.

Effective: March 22, 2013

Legislation: House Bill 251 - 129th General Assembly

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(A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a certificate to practice as an oriental medicine practitioner or certificate to practice as an acupuncturist to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the certificate.

(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 issue a certificate to an applicant, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of the following reasons:

- (1) Permitting the holder's name or certificate to be used by another person;
- (2) Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;
- (3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board;
- (4) A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established;
- (5) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;
- (6) 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;

(7) Willfully betraying a professional confidence;

(8) Making a false, fraudulent, deceptive, or misleading statement in soliciting or advertising for patients or in securing or attempting to secure a certificate to practice as an oriental medicine practitioner or certificate to practice as an acupuncturist.

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.

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

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

(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 felony;

(12) Commission of an act that constitutes a felony 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 committed in the course of practice;

(14) 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;



(15) 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;

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

(17) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking in drugs;

(18) Any of the following actions taken by the state agency responsible for regulating the practice of oriental medicine or acupuncture in 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;

(19) Violation of the conditions placed by the board on a certificate to practice as an oriental medicine practitioner or certificate to practice as an acupuncturist;

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

(21) Failure to cooperate in an investigation conducted by the board under section 4762.14 of the Revised Code, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board 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;

(22) Failure to comply with the standards of the national certification commission for acupuncture and oriental medicine regarding professional ethics, commitment to patients, commitment to the profession, and commitment to the public;



(23) Failure to have adequate professional liability insurance coverage in accordance with section 4762.22 of the Revised Code;

(24) Failure to maintain a current and active designation as a diplomate in oriental medicine, diplomate of acupuncture and Chinese herbology, or diplomate in acupuncture, as applicable, from the national certification commission for acupuncture and oriental medicine, including revocation by the commission of the individual's designation, failure by the individual to meet the commission's requirements for redesignation, or failure to notify the board that the appropriate designation has not been maintained.

(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 oriental medicine practitioner or acupuncturist or applicant 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.

(D) For purposes of divisions (B)(12), (15), and (16) 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 applicant or certificate holder committed the act in question. The board shall have no jurisdiction under these divisions in cases where the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under these divisions in cases where 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 the provisions of this section or upon the board's jurisdiction to take action under the provisions of 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 or entered into a consent agreement 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) For purposes of this division, any individual who holds a certificate to practice issued under this chapter, or applies for a certificate to practice, 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.

(1) In enforcing division (B)(5) of this section, the board, upon a showing of a possible violation, may compel any individual who holds a certificate to practice issued under this chapter or who has applied for a certificate pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and 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 oriental medicine practitioner or acupuncturist unable to practice because of the reasons set forth in division (B)(5) of this section, 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 an initial, continued, reinstated, or renewed certificate to practice. An individual affected by this division shall be afforded an opportunity to demonstrate to the board the ability to resume practicing in compliance with acceptable and prevailing standards of care.

(2) For purposes of division (B)(6) of this section, if the board has reason to believe that any individual who holds a certificate to practice issued under this chapter or any applicant for a certificate 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 certificate or deny the individual's application and shall require the individual, as a condition for an initial, continued, reinstated, or renewed certificate, to submit to treatment.

Before being eligible to apply for reinstatement of a certificate suspended under this division, the oriental medicine practitioner or acupuncturist 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:

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

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

When the impaired individual resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include monitoring of 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 individual has maintained sobriety.

- (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 oriental medicine practitioner or acupuncturist 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 the 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 oriental medicine practitioner or acupuncturist 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 hearing is requested, unless otherwise agreed to by both the board and the certificate holder.

A 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 sixty days after completion of its hearing. Failure to issue the order within sixty 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)(11), (13), or (14) 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 and supporting court documents, the board shall reinstate the 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 opportunity for 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, it may order any of the sanctions specified in division (B) of this section.

(I) The certificate to practice of an oriental medicine practitioner or acupuncturist and the practitioner's or acupuncturist's practice in this state are automatically suspended as of the date the practitioner or acupuncturist 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 the 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 suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's certificate to practice.

(J) In any instance in which the board is required by Chapter 119. of the Revised Code to give notice of opportunity for hearing and 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 the 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 shall be accompanied by a written statement of the conditions under which the certificate to practice may be reinstated. The board shall adopt rules in accordance with Chapter 119. of the Revised Code 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 practice to an applicant, revokes an individual's certificate, refuses to renew a certificate, or refuses to reinstate an individual's certificate, 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 as an oriental medicine practitioner or certificate to practice as an acupuncturist 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 to practice as an oriental medicine practitioner or certificate to practice as an acupuncturist issued under this chapter is not effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

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

(3) Failure by an individual to renew a certificate in accordance with section 4762.06 of the Revised Code shall not remove or limit the board's jurisdiction to take disciplinary action under this section against the individual.