Ohio Board of Nursing *www.nursing.ohio.gov*
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MEMORANDUM

TO: Ohio Board of Nursing

FROM: Holly Fischer, Chief Legal Counsel

SUBJECT: 2021 Five Year Rule Review; Technical Changes

DATE: March 8, 2021

Five-Year Rule Review

This year, as part of the five-year review, the Board will be discussing:

- Chapter 4723-5 Nursing Education Program
    - The Advisory Group on Nursing Education will meet on May 6, and any recommendations from the group regarding Chapter 4723-5 revisions should be submitted to the Board following that meeting.
- Chapter 4723-7 Examination and Licensure
- Chapter 4723-13 Delegation of Nursing Tasks
    - Rule 4723-13-05(E)(5) – correct typo (should refer to 4723 not 4732)
- Chapter 4723-27 Medication Administration by Certified Medication Aides
    - See attached regarding CE document requirement revisions.

Non-Five-Year Review/Technical Changes

- Rule 4723-1-03 (“Forms Rule”)
- New Rules 4723-8-12, 4723-8-13; Rule 4723-8-08 and 4723-9-10: Consult Agreements
    - The Board will adopt rules for APRN Consult Agreements to implement HB 203 (133rd GA). Attached is a preliminary draft that has been submitted to the State Medical Board, which is reviewing

the draft at its March 10 meeting, and State Board of Pharmacy for review. The APRN Advisory Committee was provided the language to review at its March 9, 2021 meeting. ORC 4729.39 requires the Board of Nursing to adopt rules in consultation with these agencies. The attached draft (Rules 4723-8-12, 4723-8-13) is virtually identical to the Medical Board rules (4731-35-01, 4731-35-02) for physicians, which were effective in October 2020. The Medical Board will be amending its rules to include physician assistants. Some edits will also be made to Rules 4723-8-08 and 4723-9-10 to cross-reference the consult agreement rules and remove references to the CPG.

- Rule 4723-9-10 – Consider whether to add language that construes 4723.481(C)(2)(b) (locations where an APRN can prescribe schedule IIs) so that if the APRN is employed by/contracted with a hospital/entity the prescribing can be electronically from any location; vs. seeking a legislative change.

- CE Documentation Rules – See table, *attached* – remove language requiring CE documentation to be uploaded with license applications.

Tentative Timelines

- **May 6, 2021 Nursing Education Advisory Group meeting –** identify final recommendations for rule changes
- **May Board meeting –** Review draft rule language
- **June 24, 2021 –** 1pm Interested Party Meeting
- **July 12, 2021 APRN Advisory Committee – Final** review of Consult Agreement rules and any other Chapter 8 or 9 proposed rules revisions.
- **July 21-22 Board meeting –** Re-review rules if needed before CSI filing
- **August 25, 2021 –** File with CSI
- **September 8, 2021 –** CSI Comment deadline
- **October 15, 2021 –** File Rules
- **November 17, 2021 –** Rules Hearing
- **December 6, 2021 –** JCARR Hearing

License Type	CE Documents Required?	Rule Cite	Notes
DT	Required for Reactivation Required for Reinstatement	4723-23-05(I)(3) 4723-23-05(J)(3)	
CHW	Required for Reactivation and Reinstatement	4723-26-04(E)	
Med Aide	Required for Reactivation and Reinstatement *if certificate is lapsed/inactive for 2 years or less* Not required if lapsed/inactive more than 2 years – instead must within 6 months prior to application, repeat the training program and provide proof of this	4723-27-05 (D)(3) 4723-27-05(E)	
APRN	No documentation required for reinstatement or reactivation	See 4723-8-08(I)	
RN and LPN	Reciprocity	4723-7-05(B)(4); 4723-7-06 (B)(4)	ORC 4723.09 only requires evidence "sufficient to the Board" of 2 hours of CE in Ohio law & rules so an attestation would suffice if rule was changed

4723-8-12 **Consult agreements for a certified nurse-midwife, certified nurse practitioner, and clinical nurse specialist.**

(A) For purposes of this rule and rule 4723-8-13 of the Administrative Code, practitioner means an advanced practice registered nurse licensed under Chapter 4723 of the Revised Code and practicing in Ohio as a certified nurse-midwife, certified nurse practitioner, or clinical nurse specialist.

(B) Requirements of a consult agreement

(1) A consult agreement shall include all of the following:

(a) Identification of the practitioner(s) and pharmacist(s) authorized to enter the agreement. They may include:

(i) Individual names of the practitioner(s) and pharmacists;

(ii) Practitioner or pharmacist practice groups;

(iii) Identification based on institutional credentialing or privileging; or

(iv) If multiple practitioners are entering the consult agreement, identification of the primary practitioner for the patient.

(b) A description of the patient's consent to drug therapy management pursuant to the consult agreement in compliance with paragraph (E) of rule 4729:1-06-01 of the Administrative Code.

(c) The specific diagnoses and diseases being managed under the agreement, including whether each disease is primary or comorbid.

(d) A description of the drugs or drug categories managed as part of the agreement.

(e) A description of the procedures, decision criteria, and plan the managing pharmacist is to follow in acting under a consult agreement. Such a description should provide a reasonable set of parameters for the activities a managing pharmacist is allowed to perform under a consult agreement.

(f) A description of the types of tests permitted pursuant to section 4729.39 of the Revised Code that may be ordered and evaluated by the managing pharmacist as long as the tests relate directly to the management of drug therapy. This may include specific tests or categories of testing that may be ordered and evaluated.

(g) A description of how the managing pharmacist shall maintain a record of each action taken for each patient whose drug therapy is managed under

the agreement. All prescribing, administering, and dispensing of drugs shall be documented using positive identification pursuant to paragraph (N) of rule 4729-5-01 of the Administrative Code.

(h) A description of how communication between a managing pharmacist and practitioner acting under a consult agreement shall take place at regular intervals specified by the practitioner who authorized the agreement. The agreement may include a requirement that the managing pharmacist send a consult report to each consulting practitioner.

(i) A provision that allow a practitioner to override a decision made by the managing pharmacist when appropriate.

(j) An appropriate quality assurance mechanism to ensure that managing pharmacists only act within the scope authorized by the consult agreement.

(k) A description of a continuous quality improvement (CQI) program used to evaluate effectiveness of patient care and ensure positive patient outcomes. The CQI program shall be implemented pursuant to the agreement.

(l) The training and experience criteria for managing pharmacists. The criteria may include privileging or credentialing, board certification, continuing education or any other training requirements. The agreement shall include a process to verify that the managing pharmacists meet the specified criteria.

(m) A statement that the practitioner(s) and pharmacists shall meet minimal standards of care at all times.

(n) An effective date and expiration date.

(o) Any other requirements contained in rules 4729:1-6-01, 4729:1-6-02 and 4729:1-6-03 of the Administrative Code.

(2) Institutional or ambulatory outpatient facilities may implement a consult agreement and meet the requirements of paragraphs (A)(1)(c) to (A)(1)(f) of this rule through institutional credentialing standards or policies. Such standards or policies shall be referenced as part of the consult agreement and available to an agent of the board upon request.

(3) The consult agreement shall be signed by the primary practitioner and one of the following:

(a) The terminal distributor's responsible person, which may include the responsible person's designee if the designee meets the qualifications of

the responsible person pursuant to Chapter 4729. of the Revised Code; or

(b) A managing pharmacist licensed pursuant to Chapter 4729. of the Revised Code.

(4) All amendments to a consult agreement shall be signed and dated by the primary practitioner and one of the following:

(a) The terminal distributor's responsible person, which may include the responsible person's designee if the designee meets the qualifications of the responsible person pursuant to Chapter 4729. of the Revised Code; or

(b) A managing pharmacist licensed pursuant to Chapter 4729. of the Revised Code.

(c) Amendments to the consult agreement are required when the scope of the managing pharmacist's permitted procedures expands past what was contemplated in the original agreement.

(5) A consult agreement shall be valid for a period not to exceed two years.

(6) A practitioner may enter a consult agreement with an Ohio licensed pharmacist if the physician or podiatrist with whom the practitioner collaborates, with respect to patient(s) that are the proposed subjects of consult agreements, has authorized in the standard care agreement that the practitioner may enter consult agreements for those patient(s).

(C) Recordkeeping. The primary practitioner, practitioner group or institution as defined in agency 4729 of the Administrative Code shall maintain a copy of the original consult agreement, all amendments made to the agreement, and a record of actions made in consultation with the managing pharmacist regarding each patient's drug therapy. The records shall be maintained in such a manner that they are readily retrievable for at least three years from the date of the last action taken under the agreement. Consult agreements shall be considered confidential patient records.

(D) Managing drug therapy.

(1) For purposes of implementing the management of a patient's drug therapy by an authorized managing pharmacist acting pursuant to a consult agreement, the primary practitioner must:

(a) Provide the managing pharmacist with access to the patient's medical record;

(b) Establish the managing pharmacist's prescriptive authority as one or both

of the following:

(i) A prescriber authorized to issue a drug order in writing, orally, by a manually signed drug order sent via facsimile or by an electronic prescribing system for drugs or combinations or mixtures of drugs to be used by a particular patient as authorized by the consult agreement. For all prescriptions issued by a pharmacist pursuant to this paragraph, the pharmacist shall comply with rules 4729-5-30 and 4729-5-13 of the Administrative Code; and or

(ii) With respect to non-controlled dangerous drugs only, an agent of the consulting practitioner(s). As an agent of the consulting practitioner(s), a pharmacist is authorized to issue a drug order, on behalf of the consulting practitioner(s), in writing, orally, by a manually signed drug order sent via facsimile or by an electronic prescribing system for drugs or combinations or mixtures of drugs to be used by a particular patient as authorized by the consult agreement;

(c) Specifically authorize the managing pharmacist's ability to:

(i) Change the duration of treatment for the current drug therapy; adjust a drug's strength, dose, dosage form, frequency of administration, route of administration, discontinue a drug, or to prescribe new drugs; and or

(ii) Order tests related to the drug therapy being managed and to evaluate those results; and

(d) Identify the extent to which, and to whom, the managing pharmacist may delegate drug therapy management to other authorized pharmacists under the agreement.

(E) Review of consult agreements. Upon the request of the board, the practitioner shall immediately provide a copy of the consult agreement, amendments, and any related policies or documentation pursuant to this rule and section 4729.39 of the Revised Code. The board may prohibit the execution of a consult agreement, or subsequently void a consult agreement, if the board finds any of the following:

(1) The agreement does not meet the requirements set forth in section 4729.39 of the Revised Code or Chapter 4723. of the Administrative Code; or

(2) The consult agreement, if executed, would present a danger to patient safety.

4723-8-13 **Standards for managing drug therapy according to a consult agreement.**

(A) A practitioner may elect to manage the drug therapy of an established patient by entering into a consult agreement with a pharmacist. The agreement is subject to but not limited by the following standards:

(1) The primary practitioner must ensure that the managing pharmacist has access to the patient's medical record, the medical record is accurate, and that while transferring the medical record, the primary practitioner ensures the confidentiality of the medical record.

(2) The practitioner must have an ongoing practitioner-patient relationship with the patient whose drug therapy is being managed, including an initial assessment and diagnosis by the practitioner prior to the commencement of the consult agreement.

(3) With the exception of inpatient management of patient care at an institutional facility as defined in agency 4729 of the Administrative Code, the practitioner, prior to a pharmacist managing the patient's drug therapy, shall communicate the content of the proposed consult agreement to each patient whose drug therapy is managed under the agreement, in such a manner that the patient or the patient's representative understands the scope and role of the managing pharmacist, which includes the following:

(a) That a pharmacist may be utilized in the management of the patient's care;

(b) That the patient or an individual authorized to act on behalf of a patient has the right to elect to participate in and to withdraw from the consult agreement; and

(c) Consent may be obtained as part of the patient's initial consent to treatment.

(4) The diagnosis by the practitioner must be within the practitioner's scope of practice.

(5) The practitioner shall meet the minimal and prevailing standards of care.

(6) The practitioner must ensure that the pharmacist managing the patient's drug therapy has the requisite training and experience related to the particular diagnosis for which the drug therapy is prescribed. Practitioners practicing at institutional or ambulatory outpatient facilities may meet this requirement through institutional credentialing standards or policies.

(7) The practitioner shall review the records of all services provided to the patient under the consult agreement.

(B) Quality assurance mechanisms. The following quality assurance mechanisms shall be implemented to verify information contained within the consult agreement, and ensure the managing pharmacist's actions are authorized and meet the standards listed in paragraphs (A) and (B) of this rule:

(1) Verification of ongoing practitioner-patient relationship. A practitioner-patient relationship can be established by detailing criteria set forth in paragraph (A)(2) of this rule within the consult agreement.

(2) Verification that practitioner diagnosis is within the practitioner's scope of practice. Establishing that a diagnosis is within the practitioner scope of practice may be established by detailing the criteria set forth in paragraph (A)(4) of this rule within the consult agreement.

(3) Verification that the pharmacist's training and experience is related to the drug therapy. Establishing that a pharmacist's requisite training and experience with a particular drug therapy is related to the diagnosis for which the drug therapy is prescribed may be established by detailing the criteria set forth n paragraph (A)(6) of this rule within the consult agreement.

(C) Continuous quality improvement program. The following should be included in the development of a continuous quality improvement program in order to evaluate the effectiveness of patient care and ensure positive patient outcome:

(1) Notifications to the primary practitioner. The managing pharmacist must notify the primary practitioner of the following situations regarding any pharmacist authorized to manage drug therapy under the agreement:

(a) A pharmacist has had their pharmacist license revoked, suspended, or denied by the state board of pharmacy;

(b) If prescribing controlled substances, a pharmacist has failed to renew their controlled substance prescriber registration;

(c) If prescribing controlled substances, a pharmacist fails to obtain or maintain a valid D.E.A. registration;

(D) Overriding decisions of managing pharmacist. Any authorized practitioner identified under the consult agreement may override any decision, change, modification, evaluation or other action by any pharmacist acting pursuant to the consult agreement or under the direction of the managing pharmacist, that was made with respect to the management of the patient's drug therapy under the consult agreement.