



April 6, 2018

State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, OH 43215

Re: Proposed Changes to One-Bite Program Rules, OAC Sections 4731-16-17, 4731-16-18, 4731-16-19, 4731-16-20, and 4731-16-21

Dear Medical Board Members,

On behalf of the Medical Association Coalition (MAC) and entities referenced below, we appreciate the opportunity to provide comments on the proposed changes to the Medical Board's one-bite program rules and are submitting this letter to share our collective view.

House Bill 145 was enacted by the Ohio General Assembly as a result of the outstanding leadership of Representatives Huffman and Sprague and the hard work of Cheryl Grossman. The Medical Board (members and staff), medical associations, and the Ohio Physicians Health Program (OPHP) worked collaboratively to establish the framework of an effective one-bite program. For several months, Medical Board staff AJ Groeber and Kim Anderson met regularly with OPHP staff members Kelley Long, Nelson Heise, and David Goldberg, D.O. bringing in experts as needed to develop the initial draft rules that would serve as the foundation of the one-bite program established by House Bill 145.

The MAC fully endorsed House Bill 145 with the understanding that the rules and processes previously agreed upon would be honored once the bill was enacted. We understood that existing rules would need to be edited to align with the legislative language, but we were surprised to see that significant changes were made to the most recent draft rules circulated for comment (specifically, Ohio Administrative Code sections 4731-16-17 through 4731-16-21). We have outlined in detail these variances in the attached document and also included suggested changes for your consideration.

The MAC has participated in good faith to assist in establishing a confidential program that provides clarity as to eligibility for the program, allows for flexibility of individualized treatment plans and monitoring terms, and includes safeguards to ensure public safety. The latest round of proposed changes to the rules are too prescriptive, not clinically based, and will ultimately deter physicians and other licensees from seeking treatment, possibly placing the public at risk. The changes appear to model current language used in Consent Agreements for discipline related to impairment cases and are not supportive of an intervention and recovery model.

We kindly request the rules be amended to honor the previously agreed upon criteria. To support this, we suggest a meeting be held with the MAC, OPHP, and the Medical Board members and staff to discuss these concerns. We are aware of the desire to file the rules swiftly and would make our best efforts to participate in such a meeting as soon as administratively possible. We believe this meeting would be most effective if facilitated by Representative Stephen Huffman.

In addition to concerns with the proposed rule changes, we have concerns about the contract draft between the Medical Board and the monitoring organization. We believe that several sections may violate 42 CFR part II and the spirit of House Bill 145. The proposed contract includes language related to payment for services and seems to be prepared in a manner that indicates the monitoring organization would operate as an extension of the Board rather than for services already offered by an organization. Executing an RFP for a no-pay contract seems administratively burdensome when the Medical Board could negotiate terms with OPHP through a memorandum of understanding.

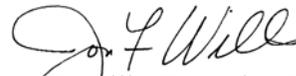
OPHP, which has over forty years of experience providing confidential monitoring services, remains the logical choice for the monitoring organization. OPHP was a leader in establishing a nonprofit organization to assist physicians and the model of this program has been used for decades in the vast majority of states because it focuses on early intervention, prevention and patient safety. As an example, the Ohio Lawyers Assistance Program (OLAP) makes the clinical recommendations for the most effective treatment for each individual participating in their program or as referred by the Ohio Supreme Court. OLAP does not have a formal agreement with the Ohio Supreme Court but receives seventy-seven percent of their operating budget from the Ohio Supreme Court.

We appreciate the opportunity to provide comments on the rules and contract and look forward to additional discussion. We are committed to working together with the Medical Board to implement an effective and successful one-bite program.

Sincerely,



Todd Baker, Chief Executive Officer
Ohio State Medical Association



Jon F. Wills, Executive Director Emeritus
Ohio Osteopathic Association



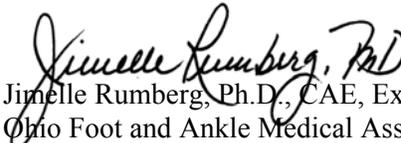
Janet Shaw, MBA, Executive Director
Ohio Psychiatric Physicians Association



Ann Spicer, Executive Vice-President
Ohio Academy of Family Physicians



Elayne R. Biddlestone, EVP/CEO
The Academy of Medicine of Cleveland & Northern Ohio



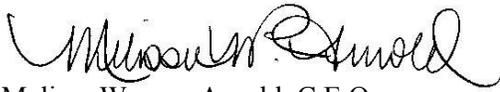
Jimelle Rumberg, Ph.D., CAE, Executive Director
Ohio Foot and Ankle Medical Association



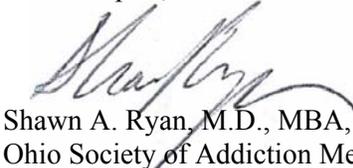
Robert Falcone, M.D., C.E.O.
Columbus Medical Association

Scott Wilhelm, M.D., FACS

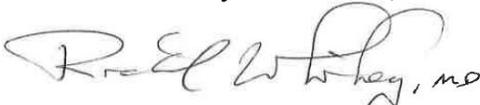
Scott Wilhelm, M.D., FACS, President
Ohio Chapter, American College of Surgeons



Melissa Wervey Arnold, C.E.O.
American Academy of Pediatrics, Ohio Chapter



Shawn A. Ryan, M.D., MBA, President
Ohio Society of Addiction Medicine



Richard Whitney, M.D., Medical Director
Shepherd Hill



Joan M. Englund, Executive Director
Mental Health & Addiction Advocacy Coalition



Laura L. Tiberi, Executive Director
Ohio Chapter, American College of Emergency Physicians



Terry Russell, Executive Director
National Alliance on Mental Illness Ohio

Enclosure

Cc: Representative Stephen A. Huffman
Representative Robert C. Sprague
Cheryl Grossman

(I) Any relapse as defined in paragraph (B) of rule 4731-16-01 [or confirmed positive drug screen](#) shall be reported to the board by the medical director of the monitoring organization and the licensee.

Previously agreed upon language: Any relapse as defined in rule 4731-16-01 shall be reported to the board by the medical director of the monitoring provider.

Suggested change: Utilize previously agreed upon language.

(J) The board shall develop guidelines for the reporting of non-compliance with conditions of the one-bite program. [Non-compliance shall be reported to the Board by the licensee and the medical director of the monitoring organization.](#)

Previously agreed upon language: The board shall develop guidelines for the reporting of non-compliance with conditions of the impaired reporting exemption program. Depending on the frequency or severity of non-compliance, non-compliance shall be reported to the board by the licensee and the medical director of the monitoring provider.

Suggested change: The board and the monitoring organization shall jointly develop guidelines for the reporting of non-compliance with conditions of the impaired reporting exemption program. Depending on the frequency or severity of non-compliance, non-compliance shall be reported to the board by the licensee and the medical director of the monitoring provider.

4731-16-19 Monitoring organization for one-bite program

(A)(6) [At the request of the board, the medical director of the monitoring provider shall provide testimony in any disciplinary proceeding involving a licensee reported to the board by the monitoring organization.](#)

Previously agreed upon language: No previous language considered.

Suggested change: Remove.

(B)(1) The agreement shall provide that the licensee is required to participate in random [observed toxicology screenings of biological materials, including but not limited to, blood, urine, hair, saliva, breath, or fingernail samples for drugs and alcohol no less than four times per month for the first year of the agreement and no less than two times per month for the remainder of the agreement.](#)

Previously agreed upon language: The agreement shall provide that the licensee is required to participate in random drug screens no less than two times per month.

Suggested change: Utilize previously agreed upon language.

(B)(2) The agreement shall provide that the licensee shall attend drug and alcohol support group meetings (e.g. alcoholics anonymous or narcotics anonymous) as directed by the monitoring organization [with a minimum of attendance of three times per week for the first year of the agreement and no less than two times per week with a minimum of 10 meetings per month for the remainder of the agreement.](#)

Previously agreed upon language: The agreement shall provide that the licensee shall attend drug and alcohol support group meetings (e.g. alcoholics anonymous or narcotics anonymous) as directed by the monitoring provider with a minimum of attendance at 10 meetings per month.

Suggested change: Utilize previously agreed upon language.

(D) [The monitoring organization shall within 48 hours, report to the board any licensee who fails to comply with the monitoring agreement.](#)

Previously agreed upon language: No previously agreed upon language – reporting of non-compliance language was to be determined.

Suggested change: **The monitoring organization shall report to the board any licensee who fails to comply with the monitoring agreement in accordance with the non-compliance guidelines established by the Board and the monitoring organization.**

(E) [The monitoring organization shall within 48 hours,](#) report any relapse as defined in rule 4731-16-01(B) of the Administrative Code shall be reported to the board.

Previously agreed upon language: Any relapse as defined in rule 4731-16-01(B) of the Administrative Code shall be reported to the board.

Suggested change: **Utilize previously agreed upon language.**

(G) The monitoring organization, [in consultation with the board,](#) shall provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program and the board’s statutes, rules and policies regarding impairment. [The monitoring organization shall utilize training materials prepared by the board.](#)

Previously agreed upon language: The monitoring provider shall provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the impairment reporting exemption program and the board’s statutes, rules and policies regarding impairment.

Suggested change: **The monitoring provider and the medical board shall jointly provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program.**

(H) The monitoring organization shall [within 48 hours,](#) report to the board any failure to complete treatment or continuing care.

Previously agreed upon language: The monitoring provider shall report to the board any failure to complete treatment or continuing care.

Suggested change: **Utilize previously agreed upon language.**

4731-16-20 Treatment providers for one-bite program

(A)(2) Medical director is a board-certified addictionologist or board-certified addiction psychiatrist and is experienced in diagnosing and treatment physicians and other health care practitioners with substance use disorders:

- (a) The medical director shall be directly involved in the initial assessment and diagnosis, ongoing treatment processes, including medications, treatment planning and discharge planning.
- (b) The medical director shall have knowledge and experience with prescribing medications specifically indicated for use in patients with substance use disorders and with medications to be avoided for patients with substance use disorders.
- (c) The medical director shall have specific training and knowledge regarding the interpretation of the results of toxicology screening for drugs and alcohol.

Previously agreed upon language: Medical director is board-certified addictionologist or addiction psychiatrist.

Suggested change: Utilize previously agreed upon language.

(A)(7) The treatment provider shall be capable of completing evaluations pursuant to rule 4731-16-05 of the Ohio administrative code.

Previously agreed upon language: No previously agreed upon language.

Suggested change: No change.

(A)(8) The treatment provider provides abstinence-based education and treatment for all types of substance use disorders.

Previously agreed upon language: No previously agreed upon language.

Suggested change: No change.

(A)(9) The treatment provider provides levels of patient care, including medical detoxification; inpatient or residential treatment; extended residential treatment; intensive outpatient treatment and continuing care.

Previously agreed upon language: No previously agreed upon language.

Suggested change: The treatment provider provides levels of patient care, including medical detoxification; inpatient or residential treatment; extended residential treatment; partial hospitalization, intensive outpatient treatment, continuing care, or others as necessary.

(A)(10) The treatment provider has the ability to provide extended residential care for up to 90 days for patients who require continued treatment of severe, resistant, or advanced stage of substance use disorders.

Previously agreed upon language: No previously agreed upon language.

Suggested change: The treatment provider has the ability to provide extended residential care for patients who require continued treatment for substance use disorders.

4731-16-21 Continuing care for one-bite program

(C) The continuing care provider shall provide group therapy led by a psychologist or masters-level chemical dependency counselor, social worker, or therapist.

Suggested change:

The continuing care provider shall provide therapy led by a psychologist or masters-level chemical dependency counselor, social worker, or therapist.

Suggested Addition:

(C)(3) Continuing care provider shall provide status reports for each participating licensee to the monitoring organization no less than quarterly.