



Ohio Administrative Code

Rule 4723-26-11 Disciplinary actions against certified community health workers; investigations.

Effective: February 1, 2015

(A) The board of nursing, by the vote of a quorum, may impose one or more of the following sanctions if it finds that a person committed fraud in passing an examination required by a community health worker training program, or committed fraud, misrepresentation, or deception in applying for a community health worker certificate: deny, revoke, suspend, or place restrictions on a certificate issued by the board; reprimand or otherwise discipline a certificate holder; or impose a fine of not more than five hundred dollars per violation.

(B) By the vote of a quorum, the board may impose one or more of the following sanctions on an individual who applies for or holds, a community health worker certificate: deny, revoke, suspend, or place restrictions on a community health worker certificate, or reprimand or otherwise discipline a holder of a community health worker certificate. The sanctions may be imposed for any of the following:

(1) Denial, revocation, suspension, or restriction of authority to engage in a licensed profession or practice a health care occupation, in Ohio or another state or jurisdiction, including but not limited to nursing, practice as a dialysis technician, nurse aide, community health care worker or medication aide, for any reason other than a failure to renew;

(2) Performing a nursing task as a certified community health worker having failed to renew a community health worker certificate issued under Chapter 4723. of the Revised Code, or while a community health worker certificate is under suspension or inactive;

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, of a misdemeanor committed in the course of performing care as a certified community health worker;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting



from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, any felony or any crime involving gross immorality or moral turpitude;

(5) Selling, giving away, or administering drugs or therapeutic devices for other than legal and legitimate therapeutic purposes; or conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, violating any municipal, state, county, or federal drug law;

(6) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

(7) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio;

(8) Self-administering or otherwise taking into the body any dangerous drug, as defined in section 4729.01 of the Revised Code, in any way not in accordance with a legal, valid prescription issued for that individual, or self-administering or otherwise taking into the body any drug that is a schedule I controlled substance;

(9) Habitual or excessive use of controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs the individual's ability to comply with the standards of safe care established in rule 4723-26-10 of the Administrative Code;

(10) Impairment of the ability to comply with standards of safe care established in rule 4723-26-10 of the Administrative Code because of the use of drugs, alcohol or other chemical substances;

(11) Impairment of the ability to comply with standards of safe care established in rule 4723-26-10



of the Administrative Code because of a physical or mental disability;

(12) Assaulting or causing harm to a patient or depriving a patient of the means to summon assistance;

(13) Misappropriation or attempted misappropriation of money or anything of value in the course of performing care as a certified community health worker;

(14) Adjudication by a probate court of being mentally ill or mentally incompetent. The board may restore the person's community health worker certificate upon adjudication by a probate court of the person's restoration to competency or upon submission to the board of other proof of competency;

(15) The suspension or termination of employment by the department of defense or the veterans administration of the United States for any act that violates or would violate his chapter;

(16) Violation of Chapter 4723. of the Revised Code or any rules adopted under it;

(17) Violation of any restrictions placed on a community health worker certificate by the board;

(18) Failure to use universal and standard precautions including those set forth in Chapter 4723-20 of the Administrative Code;

(19) Engaging in activities that exceed those permitted under sections 4723.81 to 4723.88 of the Revised Code or this chapter;

(20) Failure by a certified community health worker to conform to the standards of safe care established in rule 4723-26-10 of the Administrative Code;

(21) Aiding and abetting a person in that person's practice of nursing without a license, or practice as a dialysis technician or certified medication aide without a certificate issued under this chapter;

(22) Regardless of whether the contact or verbal behavior is consensual, engaging with a patient other the spouse of the certified community health worker in any of the following:



(a) Sexual contact, as defined in section 2907.01 of the Revised Code;

(b) Verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning; or

(23) Assisting suicide as defined in section 3795.01 of the Revised Code.

(C) The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code and Chapter 4723-16 of the Administrative Code. The board may appoint a hearing examiner, as provided in section 119.09 of the Revised Code, to conduct any hearing the board is authorized to hold under Chapter 119. of the Revised Code.

(D) In any instance in which the board is required under Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the applicant or certificate holder does not make a timely request for a hearing in accordance with section 119.07 of the Revised Code:

(1) The board is not required to hold a hearing, but may adopt, by vote of a quorum, a final order that contains the board's findings; and

(2) In the final order, the board may order any of the sanctions listed in paragraph (A) or (B) of this rule.

(E) If a criminal action is brought against a certified community health worker for an act or crime described in paragraphs (B)(3) to (B)(7) of this rule and the action is dismissed by the trial court other than on the merits:

(1) The board shall conduct an adjudication to determine whether the certified community health worker committed the act upon which the action was based.

(2) If the board determines on the basis of the adjudication that the certified community health worker committed the act, or if the certified community health worker fails to participate in the adjudication, the board may take action as though the certified community health worker had been



convicted of the act.

(F) If the board takes action on the basis of a conviction, plea, or a judicial finding as described in paragraphs (B)(3) to (B)(7) of this rule that is overturned on appeal, the certified community health worker may, on exhaustion of the appeal process, petition the board for reconsideration of its action.

(1) On receipt of the petition and supporting court documents, the board shall temporarily rescind its action.

(2) If the board determines that the decision on appeal was a decision on the merits, it shall permanently rescind its action.

(3) If the board determines that the decision on appeal was not a decision on the merits, it shall conduct an adjudication to determine whether the certified community health worker committed the act on which the original conviction, plea, or judicial finding was based.

(a) If the board determines on the basis of the adjudication that the certified community health worker committed such act, or if the certified community health worker does not request an adjudication, the board shall reinstate its action.

(b) If the board determines that the certified community health worker did not commit such act, the board shall permanently rescind its action.

(G) The board may investigate an individual's criminal background in performing its duties under this rule and sections 4723.81 to 4723.88 of the Revised Code. As part of such investigation, the board may order the individual to submit, at the individual's expense, a request to the bureau of criminal identification and investigation for a criminal records check and check of federal bureau of investigation records in accordance with the procedure described in section 4723.091 of the Revised Code.

(H) During the course of an investigation the board may compel any certified community health worker, or applicant under section 4723.84 of the Revised Code, to submit to a mental or physical examination, or both, as required by the board and at the expense of the individual, if the board finds



reason to believe that the individual under investigation may have a physical or mental impairment that may affect the individual's ability perform delegated nursing tasks. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations, 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.

(I) If the board finds that an individual is impaired in accordance with paragraph (H) of this rule, the board shall require the individual to submit to care, counseling, or treatment approved or designated by the board, as a condition for an initial, continued, reinstated, or renewed certified community health worker certificate.

(1) The individual shall be afforded an opportunity to demonstrate to the board that the individual can begin or resume the performance of delegated nursing tasks in accordance with standards established under rule 4723-26-10 of the Administrative Code.

(2) For purposes of this paragraph, any certified community health worker or applicant under this rule 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.

(J) The provisions of division (I) of section 4723.28 of the Revised Code apply to information, investigations and adjudications involving certified community health workers or applicants under sections 4723.81 to 4723.88 of the Revised Code and this chapter.

(K) The provisions of section 4723.29 of the Revised Code apply with respect to any matter that the board has authority to investigate, inquire into, or hear under sections 4723.81 to 4723.88 of the Revised Code and this chapter.

(L) When the board refuses to grant a community health worker certificate to an applicant, revokes a certificate, or refuses to reinstate a certificate, the board may specify that its action is permanent. An individual subject to permanent action taken by the board is forever ineligible to hold a community health worker certificate and the board shall not accept from the individual an application for reinstatement of the certificate or for a new certificate.



(M) No unilateral surrender of a community health worker certificate issued under Chapter 4723. of the Revised Code shall be effective unless accepted by majority vote of the board. No application for a community health worker certificate issued under Chapter 4723. of the Revised Code may be withdrawn without a majority vote of the board. The board's jurisdiction to take disciplinary action is not removed or limited when an individual has a certificate classified as inactive or fails to renew a certificate.