

Insights

Ohio Medical Board Issues Guidance On Ohio Telemedicine Prescribing Rule

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The State Medical Board of Ohio recently issued a Frequently Asked Questions Guidance Document ("FAQ") on Rule 4731-11-09 of the Ohio Administrative Code, which governs when a physician or physician assistant can prescribe medication to a patient that they have not conducted an in-person examination on. This Rule, often referred to as the "Telemedicine Prescribing Rule," became effective March 23, 2017 and was a departure from previous Ohio law. The Telemedicine Prescribing Rule allows physicians and physicians assistants to prescribe medications to patients that they have not personally examined, although the standards for such prescribing are different depending on whether the medication is a controlled or non-controlled substance. The FAQ clarifies the following application of the Rule and defined terms:

- Rule 4731-11-09 applies to both physicians and physician assistants.
- The term "healthcare provider" includes both physician assistants and nurse practitioners, which is important since a physician may, under certain circumstances, rely on a medical examination conducted by another healthcare provider when prescribing non-controlled substances.
- The term "evaluation" does not necessarily require a device that allows there to be a visual examination.

In addition, the FAQ also clarifies when and how a prescriber can prescribe a controlled substance to a patient in a remote location. The FAQ discusses the ability of a prescriber to prescribe a controlled substance to patients pursuant to an on-call or cross-coverage arrangement, including the following example that clarifies what is and is not a cross-coverage arrangement:

"I am a psychiatrist. Am I able to prescribe Schedule II controlled substance stimulants such as Vyvance or Adderall to a patient in a cross-coverage arrangement with an advanced practice nurse who can only prescribe Schedule II medications for a seventy-two hour period?"

It depends. 'Cross-coverage' under Rule 4731-11-09 and federal law is defined as a practitioner who conducts a medical evaluation at the request of another practitioner who conducted a medical evaluation of the patient within the previous twenty-four months and is temporarily unavailable to conduct a current evaluation. Therefore, the advanced practice registered nurse would not be considered 'unavailable' for cross-coverage purposes if the reason the physician is being asked to prescribe is because the advanced practice registered nurse does not have authority to prescribe Schedule II controlled substances to the



particular patient. The advanced practice nurse would have to be truly unavailable.”

The FAQ also clarifies prescribing remotely in hospice programs and various institutional settings. The FAQ can be found at the following link: <http://med.ohio.gov/Portals/0/DNN/PDF-FOLDERS/PRESCRIBER-RESOURCES-PAGE/4731-11-09%20FAQs.pdf>.

If you are considering utilizing telemedicine to prescribe medication it is critical that your organization understands applicable federal and states laws in addition to having the proper policies, procedures and patient consents in place. Please do not hesitate to contact Stephanie T. Eckerle or your Krieg DeVault attorney to discuss these issues.