

STATE MEDICAL BOARD
OF OHIO

RECEIVED:
February 24, 2026

COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

2026 FEB 19 PM 2:11

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
JORDAN L. WHEELER

RUFUS FRANK LOWMAN, P.A., :
Appellant-Appellant, : CASE NO. 25CA17
v. :
STATE MEDICAL BOARD OF OHIO, : DECISION AND JUDGMENT ENTRY
Appellee-Appellee. :

APPEARANCES:

Karin L. Coble, Toledo, Ohio, for appellant.¹

Dave Yost, Ohio Attorney General, and D. Grant Wilson, Assistant Attorney General, Columbus, Ohio, for appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED:

ABELE, J.

{¶1} This is an appeal from a Ross County Common Pleas Court judgment that affirmed the order of the State Medical Board of Ohio, defendant below and appellee herein, to revoke the physician-assistant license of Rufus Frank Lowman, P.A., plaintiff below and appellant herein. Appellant assigns the following error for review:

"THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT THE AGENCY'S ORDER WAS SUPPORTED BY RELIABLE, SUBSTANTIAL, AND PROBATIVE EVIDENCE."

¹ Different counsel represented appellant during the trial court proceedings.

{¶2} On May 8, 2024, appellee sent appellant a notice of summary suspension and opportunity for hearing. The notice advised appellant that he had violated R.C. 4730.25(B)(2) and 4730.25(B)(3) and his continued practice presented "a danger of immediate and serious harm to the public." The notice alleged that, between September 23, 2022, and March 14, 2024, appellant prescribed schedule II controlled substances to multiple patients "without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code."

{¶3} Appellant requested a hearing to contest the allegations. At the hearing, appellant claimed that he did not know that his conduct did not comply with the law and stated that he believed that the prescriptions at issue fell within the R.C. 4730.411(B)(14) statutory exception. This exception, which became effective October 3, 2023, provides that a physician assistant may prescribe a schedule II controlled substance if the physician assistant issues the prescription from

[a] site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both, and the physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

R.C. 4730.411(B)(14).

{14} Appellant stated that (1) approximately 80% of his medical practice involved substance abuse and mental health treatment; and (2) he entered into a supervisory agreement with a physician and claimed that this physician, Dr. Russell Lee-Wood, was "employed by" appellant's practice.

{15} After the hearing, the hearing examiner issued a report and recommended that appellee permanently revoke appellant's license and impose a \$5,000 fine. The hearing examiner did not agree with appellant's assertion that his conduct fell within the R.C. 4730.411(B)(14) behavioral health exception. The examiner observed that appellant did not offer any evidence, other than his own testimony, that the medical clinic operated as "a behavioral health practice organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both." The examiner stated, "No evidence was provided as to how the [medical clinic] was organized." The examiner further noted that appellant did not present any "evidence that the practice held itself out as a behavioral health or substance abuse practice." The examiner instead determined that the evidence presented at the hearing tended to establish the clinic as "a general medical practice organized to treat the variety of conditions typically treated by a general practitioner." The hearing examiner also concluded that appellant failed to establish that the clinic employed a

supervisory physician. Although the examiner recognized that appellant alleged that he had entered into a supervisory agreement with Dr. Lee-Wood, the examiner found that appellant had engaged the doctor via a third-party provider and never met the doctor.

{¶6} Consequently, the hearing examiner determined that appellant "grossly exceeded the limited prescriptive authority granted to physician assistants in this state." The examiner found that appellant "was not practicing as a mental health provider, but as a pain management provider." The examiner stated that appellant's claim that the behavioral health exception authorized his conduct was "absurd." Thus, the examiner proposed a permanent license revocation and a \$5,000 fine.

{¶7} Appellant objected to the hearing examiner's report and recommendation. Appellant specifically objected to the hearing examiner's determination that the behavioral health exception did not apply. He first disputed the examiner's conclusion that the exception is an affirmative defense for which appellant bore the burden of proof. Appellant further objected to the examiner's conclusion that his practice was not a behavioral health clinic. He argued that he testified that 80% of his practice involved mental health or substance abuse treatment. He also challenged the examiner's conclusion that

Dr. Lee-Wood was not "employed by" the practice. Appellant asserted that entering into a supervisory agreement with Dr. Lee-Wood showed that the practice employed a supervisory physician.

{118} Appellee subsequently approved the examiner's report and recommendation, permanently revoked appellant's license to practice as a physician assistant and imposed a \$5,000 fine. Thereafter, appellant filed a notice of appeal with the common pleas court.

{119} On appeal to the trial court, appellant disputed whether appellee correctly interpreted the behavioral health exception. He asserted that appellee incorrectly determined that the exception is an affirmative defense for which he bore the burden of proof. The trial court agreed. In light of this determination, the trial court concluded that because appellee bore the burden to establish that the exception did not apply, the lack of evidence regarding appellant's medical practice was "a problem for [appellee], not [a]ppellant." The court further indicated that appellant's claim that he operated a behavioral health clinic failed "the smell test." The court nevertheless concluded that "the organizational and operational nature" of the clinic was, "at best, an educated guess."

{110} Regarding whether Dr. Lee-Wood was "employed by" the practice, the trial court determined that the question to be an

issue of fact. The court found that reliable, probative, and substantial evidence supported appellee's finding on this issue and that its decision in accordance with the law. The court thus affirmed appellee's decision to revoke appellant's license to practice as a physician assistant and impose a \$5,000 fine. This appeal followed.

A.

{¶11} In his sole assignment of error, appellant asserts that the trial court's conclusion that reliable, probative, and substantial evidence supports appellee's decision constitutes an abuse of discretion. Appellant further contends that the issue on appeal involves the interpretation of the R.C. 4730.411(B)(14) exception, which he asserts is a question of law subject to de novo review.

{¶12} Appellee agrees with appellant's statement of the standard of review. Appellee asserts, however, that we need not reach the statutory interpretation question. Instead, appellee contends that this court can dispose of this appeal on the alternative basis that reliable, probative, and substantial evidence supports its decision, in view of the fact that appellant issued 41 of the 52² prescriptions at issue before R.C.

² On appeal, the parties do not appear to agree on the number of prescriptions that appellant issued. Regardless, the record reflects that appellant issued approximately 75% of the prescriptions before the effective date of the R.C. 4730.411(B)(14) exception.

4730.411(B)(14) was enacted. Appellee thus asserts that appellant cannot invoke an exception that did not exist at the time that he issued the prescriptions.³

{¶13} In response, appellant does not disagree with appellee's assertion that he issued some of the prescriptions before the enactment of the statutory exception. He instead argues that this court still should determine whether the exception applies to the prescriptions that he issued after the statute's effective date. Appellant also argues that, even without the statutory exception, this court should review whether appellee selected an appropriate sanction. He suggests that appellee should have considered a license suspension for a period of time, rather than a permanent revocation.

B.

{¶14} "In an appeal from a medical board's order, a reviewing trial court is bound to uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law." (Citations omitted.) *Pons v. Ohio*

³ We observe that appellee apparently did not raise this issue during the proceedings below. Appellant, however, has not suggested that appellee forfeited the ability to raise the issue on appeal. Indeed, appellant agrees that the statutory exception does not apply to the prescriptions that he issued before the exception's effective date. For these reasons, we do not believe that appellee's failure to raise this issue during the proceedings below prevents this court from reviewing it. See generally *TWISM Enterprises, L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, ¶ 56 (pointing out that a litigant had not raised an issue at an earlier point in the proceedings but nevertheless addressing the issue when the opposing party did not "raise[] a forfeiture argument" and when the "new argument [was] easily dealt with").

State Med. Bd., 66 Ohio St.3d 619, 621 (1993); accord R.C. 119.12(N). "[W]hether an agency order is supported by reliable, probative and substantial evidence essentially is a question of the absence or presence of the requisite quantum of evidence." *Capital Care Network of Toledo v. Ohio Dept. of Health*, 2018-Ohio-440, ¶ 25, quoting *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980). An administrative appeal to the trial court is not, however "a trial de novo." *Id.*, quoting *Conrad*, 63 Ohio St.2d at 111. Instead, the trial court "must give due deference to the administrative resolution of evidentiary conflicts." *Id.*, quoting *Conrad*, 63 Ohio St.2d at 111. Thus, as long as "sufficient evidence and the law" support an agency's decision, a trial "court lacks authority to review the agency's exercise of discretion, even if its decision is 'admittedly harsh.'" *Id.*, quoting *Henry's Cafe, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233, 236-237 (1959). A trial court may, however, decide purely legal questions de novo. See *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 470-471 (1993).

{¶15} An appellate court's review of an order from an administrative agency is more limited than that of the trial court. See *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 260-261 (1988). Unlike trial courts, appellate courts generally do not examine the evidence.

See *Pons*, 66 Ohio St.3d at 621. Instead, an appellate court's duty "is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency." *Id.* Thus, absent an abuse of discretion on the part of the trial court, a court of appeals must affirm the trial court's judgment. See *id.*

{¶16} Furthermore, an appellate court must not substitute its judgment for that of an administrative agency or a trial court. See *Lorain City School Dist.*, 40 Ohio St.3d at 261 ("The fact that the court of appeals . . . might have arrived at a different conclusion than did the administrative agency is immaterial."). As to questions of law, however, appellate review is "plenary," *Gyugo v. Franklin Cty. Bd. of Dev. Disabilities*, 2017-Ohio-6953, ¶ 13, citing *State v. Straley*, 2014-Ohio-2139, ¶ 9.

C.

{¶17} R.C. 4730.25(B) (2) and (3) authorize the medical board to revoke an individual's license to practice as a physician assistant for the failure to comply with the requirements set forth in R.C. Chapter 4730 or 4731, or with any rules that the board adopts. As relevant here, R.C. 4730.41(B) (4) requires a physician assistant who "possesses physician-delegated prescriptive authority for schedule II controlled substances" to

comply with R.C. 4730.411.

R.C. 4730.411(A) provides as follows:

(A) Except as provided in division (B) or (C) of this section, a physician assistant may prescribe to a patient a schedule II controlled substance only if all of the following are the case:

(1) The patient is in a terminal condition, as defined in section 2133.01 of the Revised Code.

(2) The physician assistant's supervising physician initially prescribed the substance for the patient.

(3) The prescription is for an amount that does not exceed the amount necessary for the patient's use in a single, twenty-four-hour period.

{¶18} R.C. 4730.411(B) sets forth a number of exceptions to the restrictions contained in R.C. 4730.411(A). Before October 3, 2023, the statute set forth 13 exceptions, none of which appellant has attempted to invoke. Instead, appellant attempted to invoke the R.C. 4730.411(B)(14) exception, that became effective on October 3, 2023, to permit a physician assistant to prescribe to a patient a schedule II controlled substance if the physician assistant issues the prescription to the patient from

[a] site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both, and the physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

R.C. 4730.411(B)(14).

{¶19} In the case at bar, appellant contends that this exception applies to the 13 prescriptions that he issued after

the effective date of R.C. 4730.411(B)(14). Appellant asserts that the trial court incorrectly interpreted the statutory requirements and, thus, wrongly concluded that the exception did not apply. Appellant does recognize, however, that this exception potentially would apply only to 13 of the prescriptions that he issued and that it would not apply to the remaining prescriptions that he issued before the effective date of the exception. Appellant nevertheless argues that this court should interpret the exception and determine whether it applies to the 13 prescriptions that appellant issued after the exception's effective date.

{¶20} We, however, decline appellant's invitation to construe the R.C. 4730.411(B)(14) exception.⁴ Instead, we may affirm the trial court's judgment based upon our conclusions that (1) the court did not abuse its discretion by determining that reliable, probative, and substantial evidence supports appellee's decision to revoke appellant's license, and (2) appellee's decision is in accordance with the law. Before the effective date of the behavioral health exception, appellant

⁴ We note that courts should avoid "issuing advisory opinions. As Chief Justice Roberts has stated, '[I]f it is not necessary to decide more, it is necessary not to decide more.'" (Citations omitted.) *Capital Care Network*, 2018-Ohio-440, at ¶ 31, quoting *PDK Laboratories, Inc. v. United States Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C.Cir.2004) (Roberts, J., concurring in part and concurring in judgment).

issued approximately 40 prescriptions that (1) failed to comply with R.C. 4730.411(A), and (2) did not fall within an exception that existed at the time that he issued the prescriptions. These 40 instances alone are sufficient to support appellee's decision to revoke appellant's license. See R.C. 4730.25(B). Thus, even if we assume, arguendo, that the behavioral health exception may apply to 13 prescriptions, appellant nevertheless issued numerous prescriptions that fell outside of the authority granted in R.C. 4730.411(A). Given these violations, appellee had the authority to revoke appellant's license. See *id.*; *Capital Care Network*, 2018-Ohio-440, at ¶ 25; see generally *Reed v. State Med. Bd. of Ohio*, 2005-Ohio-4071, ¶ 41 (10th Dist.) ("The determination of the appropriate sanction in an administrative hearing is strictly for the agency."). Consequently, we do not agree with appellant that the trial court abused its discretion when it affirmed appellee's decision to revoke his license.

{¶21} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover from appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:



Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

Jordan L. Wheeler
ROSS COUNTY CLERK OF COURTS
2 N. PAINT ST., SUITE B
CHILlicoTHE, OHIO 45601

COLUMBUS OH 430

20 FEB 2026 PM 4 L

FIRST-CLASS



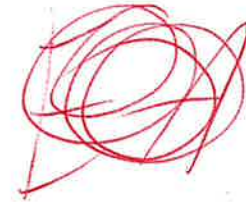
US POSTAGE IMPITNEY BOWES



ZIP 45601 \$ 001.32⁰
02 7W
0008030785 FEB. 19 2026

HHS

DANIEL WILSON
30 EAST BROAD STREET
26TH FLOOR
COLUMBUS, OH 43215



43215-341426



Law Office of Karin L. Coble, Esq.

June 9, 2025

Daniel Wilson, Esq.
Ohio Attorney General's Office
30 East Broad Street, 26th Floor
Columbus, OH 43215

STATE MEDICAL BOARD
OF OHIO

RECEIVED:
June 24, 2025

Re: *Rufus Frank Lowman v. State Medical Board of Ohio*
Ross County Case No. 24 CI 482

Dear Mr. Wilson,

Please find enclosed copies of a Notice of Appeal, Civil Docketing Statement, and Statement and Notice to Court Reporter, filed by mail to the Clerk today. These documents were filed to perfect an appeal to the Ohio Fourth District Court of Appeals.

If you have any questions, please contact me.

Thank you,



Karin L. Coble

**IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO**

RUFUS FRANK LOWMAN,

Defendant/Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Plaintiff/Appellee.

)

Case No. 24 CI 482

)

Judge Matthew S. Schmidt

)

NOTICE OF APPEAL

)

Karin L. Coble (0078571)
Law Office of Karin L. Coble
316 N. Michigan St.

)

Suite 600
Toledo, Ohio 43604

)

(888) 268-3625 – Telephone
(888) 268-6995 – Facsimile

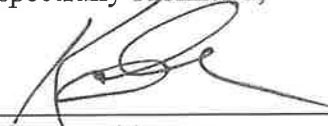
)

KarinLCoble@gmail.com
Counsel for Defendant-Appellant

)

Now comes the Defendant, Mr. Rufus Frank Lowman, by and through counsel, and he hereby gives Notice to this honorable Court and all parties herein that he appeals to the Court of Appeals of Ross County, Ohio, Fourth Appellate District, from the judgment filed and journalized May 23, 2025; copies of the Judgment Entry are attached hereto and incorporated herein.

Respectfully submitted,



Karin L. Coble, Esq.,
Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been caused to be served

by Ordinary U.S. Mail this 9th day of June 2025, upon:

Daniel Wilson, Esq. (100293)
Ohio Attorney General's Office
30 East Broad Street, 26th Floor
Columbus, OH 43215
Attorney for Plaintiff-Appellee



Counsel for Defendant-Appellant

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

COURT OF COMMON PLEAS
2025 MAY 23 PM 12: 28

RUFUS FRANK LOWMAN, P.A.
Appellant

Case No. 24 CI 482

v.

JUDGE SCHMIDT

STATE MEDICAL BOARD OF OHIO
Appellee

DECISION AND JUDGMENT ENTRY

FILED
ROSS COUNTY COMMON PLEAS
COURT OF COMMON PLEAS
JORDAN L. ...

This matter came before the Court pursuant to O.R.C. § 119.12, upon the appeal of Rufus Frank Lowman from the *Entry of Order* by the State Medical Board of Ohio dated September 11, 2024. The Order permanently revoked Appellant's license to practice as a physician assistant in the State of Ohio and fined him \$5,000.00. The Court has considered the transcript of the record filed with the Court; *Appellant's Brief*; and the *Brief of Appellee State of Ohio*.

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. O.R.C. § 119.12(N)

'Reliable' evidence is dependable or trustworthy; 'probative' evidence tends to prove the issue in question and is relevant to the issue presented; and 'substantial' evidence carries some weight or value." *Case W. Res. Univ.*, 76 Ohio St.3d at 178, 666 N.E.2d 1376, citing *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303. *Ohio Univ. v. Ohio Civ. Rts. Comm.*, 2008-Ohio-1034, ¶ 57, 175 Ohio App. 3d 414, 436, 887 N.E.2d 403, 420 (4th Dist.).

ALLEGATIONS

By *Notice of Summary Suspension and Opportunity for Hearing* dated May 8, 2024, Appellee alleged that Appellant “violated Section 4730.25(B)(2), Ohio Revised Code, and 4730.25(B)(3)” and that his “continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraph (1) below.” Paragraph (1) specifies that:

On or about September 23, 2022, through on or about March 14, 2024, you prescribed schedule II controlled substances to patients 1 through 11 as identified on the attached Patient Key (Key is confidential and to be withheld from public disclosure). You prescribed the schedule II controlled substances to the above listed patients without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.

PROCEDURAL HISTORY

A hearing was held on July 2, 2024. The Hearing Examiner issued a *Report and Recommendation* file-stamped August 1, 2024. The Hearing Examiner determined that Appellant prescribed schedule II controlled substances to 11 patients in violation of O.R.C. § 4730.411(A). The Hearing Officer further determined that Appellant’s prescriptive issuances were not otherwise permitted by O.R.C. § 4730.411(B)(14), as asserted by Appellant. By *Entry of Order* dated September 11, 2024, Appellee adopted the *Report and Recommendation* of the Hearing Officer and issued the sanctions now on appeal to this Court.

APPELLANT’S ARGUMENT

Appellant concedes that the prescriptions at issue do not meet the criteria of O.R.C. § 4730.411(A). However, Appellant asserts that the restrictions of O.R.C. § 4730.411(A) do not apply because they were issued from a qualifying location under O.R.C. § 4730.411(B)(14). Appellant further argues that the Hearing Officer improperly treated O.R.C. § 4730.411(B)(14) as

an affirmative defense and shifted to Appellant “the burden of establishing, by a preponderance of the evidence, that all of the provisions of R.C. 4730.411(B)(14) applied to the prescriptions at issue here.”¹

AFFIRMATIVE DEFENSE

Both the Hearing Officer and Appellee cite State ex rel. The Plain Dealer Publishing Co v. Cleveland, 75 Ohio St.3d 31 (1996), as authority for treating O.R.C. § 4730.411(B)(14) as an affirmative defense. The Court finds this reliance misplaced. Plain Dealer Publishing Co. dealt with the City of Cleveland’s alleged failure to release public records. The Ohio Supreme Court explained that:

An affirmative defense is a new matter which, assuming the complaint to be true, constitutes a defense to it. See *Davis v. Cincinnati, Inc.* (1991), 81 Ohio App.3d 116, 119, 610 N.E.2d 496, 498; Black’s Law Dictionary (6 Ed.1990) 60. “An affirmative defense is any defensive matter in the nature of **190 a confession and avoidance. It admits that the plaintiff has a claim (the ‘confession’) but asserts some legal reason why the plaintiff cannot have any recovery on that claim (the ‘avoidance’).” (Footnote omitted.) 1 Klein, Browne & Murtaugh, Baldwin’s Ohio Civil Practice (1988) 33, T 13.03.

Exceptions to disclosure under R.C. 149.43 are not in the nature of a confession and avoidance because the assertion of an exception does not admit the allegations *34 of an R.C. 149.43(C) mandamus action, *i.e.*, it does not concede that the requested records are “public records.”

Applying the Ohio Supreme Court’s logic to this case, Appellant has not admitted that Appellee has a claim (*i.e.* made a ‘confession’ of wrongfully prescribing), while asserting some legal reason why Appellee cannot have any recovery on that claim (*i.e.* ‘avoidance’ of sanctions for prohibited conduct). To the contrary, Appellant does not concede that the prescriptions were issued in violation of law. Appellee charged that Appellant prescribed schedule II controlled substances “without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.” Appellant has

¹ Report and Recommendation, p.13

responded that he issued the prescriptions pursuant to the authority given him by O.R.C. § 4730.411(B)(14), which is a provision specifically “set forth in the Ohio Revised Code.” This is not an affirmative defense, it is an outright denial of culpability.

O.R.C. § 4730.411(B)(14) PRESCRIPTIVE AUTHORITY

Per O.R.C. § 4730.411(B)(14), the restrictions of O.R.C. § 4730.411(A) do not apply if a physician assistant issues the prescription from:

A site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both, and the physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

O.R.C. § 4730.411(B)(14) sets forth a two-part requirement: organizational purpose and physician supervision. Appellee argues that Appellant failed to prove the site where he provided services, Rose Medical Clinic, was organized to provide “outpatient services for the treatment of mental health conditions, substance use disorders, or both.” As set forth above, Appellee misconstrues the burden of proof. Appellee notes that the record is devoid of any evidence of how Rose Medical Clinic was organized or how it held itself out. However, the lack of supporting evidence is a problem for the entity pursuing the case, not Appellant. While Appellant’s manner of conducting business certainly fails the smell test...the organizational and operational nature of Rose Medical Clinic remains, at best, an educated guess.

Both parties acknowledge that Appellant had entered into a supervisory agreement with a physician, Dr. Russell Lee-Wood. The parties disagree, however, about whether Dr. Lee-Wood was employed by Rose Medical Clinic. Appellant points out that the term “employed” is not defined by statute and invites the Court to interpret the statute’s use of “employed” as a past-tense

transitive verb² (as in: “yesterday I employed tweezers to remove a splinter”). Under Appellant’s interpretation, simply having utilized Dr. Lee-Wood’s services would suffice. Appellant’s argument ignores that the statute uses “employed” in the present-tense, indicative of a legal relationship between the physician and the site of the practice.

The record establishes that Rose Medical Clinic had no employer-employee relationship with Dr. Lee-Wood. Rose Medical Clinic obtained Dr. Lee-Wood’s services through Barton Associates, a locum tenens provider; and Rose Medical Clinic paid Barton Associates for Dr. Lee-Wood’s services. The term “locum tenens” is also not defined by statute, although Merriam-Webster defines it as “one filling an office for a time or temporarily taking the place of another → used especially of a doctor or clergyman”.³ Dr. Lee-Wood provided contracted services through a third-party, *in place of* a physician regularly “employed by” Rose Medical Clinic.

“Whether someone is an employee or an independent contractor is ordinarily an issue to be decided by the trier of fact.” State ex rel. Friendship Supported Living, Inc. v. Ohio Bureau of Workers' Comp., 172 Ohio St. 3d 414, 418 (2023). The trier of fact in this matter determined that Dr. Lee-Wood was not “employed by” Rose Medical Clinic as required by O.R.C. § 4730.411(B)(14). That determination is supported by reliable, probative, and substantial evidence and is in accordance with law.

CONCLUSION

The State Medical Board of Ohio determined that Appellant prescribed schedule II controlled substances without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code. The *Entry of Order* by the State Medical Board of Ohio dated

² Appellant cites the definition provided by merriam-webster.com

³ merriam-webster.com

September 11, 2024, is supported by reliable, probative, and substantial evidence and is in accordance with law. **The Order is therefore AFFIRMED. Costs to Plaintiff.**

5/19/2025
DATE:



JUDGE MATTHEW S. SCHMIDT
Court of Common Pleas #2
Ross County, Ohio

Benjamin J. Partee, Esq.
Kyle C. Wilcox, Esq. / D. Grant Wilson, Esq.
File

The Clerk of the Court is hereby directed to serve a copy of this Judgment Order and its date of entry upon all counsel of record and all parties not represented by counsel by personal service or if counsel is local by placing a copy in their box at the clerk's office or by U.S. Mail and to note service on the docket.
Judge Matthew Schmidt

The Clerk of the Court is hereby directed to serve a copy of this Judgment Order and its date of entry upon all counsel of record and all parties not represented by counsel by personal service or by U.S. Mail and to note service on the docket.

Judge Matthew Schmidt

Ross County Court of Common Pleas
Civil Docketing Statement

Rufus Frank Lowman, P.A.,
482

Trial Court Case No. 24 CI

Appellant,

Judge Matthew S. Schmidt

v.

State Medical Board of Ohio,

Appellee.

Counsel for appellant: Karin L. Coble, Esq. (0078571)
316 N. Michigan St., Suite 600
Toledo, OH 43604
888-268-3625
KarinLCoble@gmail.com

Counsel for appellee: Daniel Wilson, Esq. (100293)
Ohio Attorney General's Office
30 East Broad Street, 26th Floor
Columbus, OH 43215

Appeal from judgment entered May 23, 2025

No related appeals.

No multiple parties

No multiple claims

Civ.R. 54 does not apply.

Administrative appeal with record of administrative hearing.

Administrative hearing already transcribed.

No notice of appeal has been previously filed for this case.

Appellate counsel is different from trial counsel.

Case turns on interpretation of R.C. 4730.411

No settlement discussions have taken place or will take place.

No post-judgment settlement discussions have occurred.

A preliminary mediation conference would not be of any assistance in resolving the matter.

No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

Respectfully submitted,



Karin L. Coble, counsel for Appellant

**IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO**

Rufus Frank Lowman, P.A.,

Tr. Ct. Case No. 24 CI 482

Appellant,

v.

**STATEMENT AND NOTICE TO
COURT REPORTER**

State Medical Board of Ohio,

Appellee.

TO THE APPELLEE: Defendant/Appellant, Rufus Frank Lowman, hereby states that he intends to include in the record a complete transcript of the administrative proceedings in this matter.

TO THE CLERK: Immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries. No additional transcripts will be filed. Please file the record with the clerk of the Court of Appeals within 40 days of this filing. The administrative transcript has already been prepared and filed in the trial court record.

TO THE COURT REPORTER: No transcripts of trial court proceedings are requested. The administrative transcript has already been prepared and filed in the record.

Respectfully submitted,



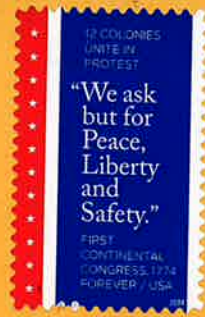
Karin L. Coble
Counsel for appellant

CERTIFICATION

I, Karin L. Coble, hereby certify that a copy of the foregoing was sent via Ordinary U.S. Mail this 9th day of June, 2025 to:

Daniel Wilson, Esq. (100293)
Ohio Attorney General's Office
30 East Broad Street, 26th Floor
Columbus, OH 43215


Counsel for appellant



Daniel Wilson, Esq.
Ohio Attorney General's Office
30 East Broad St.
26th Floor
Columbus, OH 43215

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

COURT OF COMMON PLEAS
2025 MAY 23 PM 12:28

RUFUS FRANK LOWMAN, P.A.
Appellant

Case No. 24 CI 482

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURT
JORDAN L. WILSON

v.

JUDGE SCHMIDT

STATE MEDICAL BOARD OF OHIO
Appellee

DECISION AND JUDGMENT ENTRY

This matter came before the Court pursuant to O.R.C. § 119.12, upon the appeal of Rufus Frank Lowman from the *Entry of Order* by the State Medical Board of Ohio dated September 11, 2024. The Order permanently revoked Appellant's license to practice as a physician assistant in the State of Ohio and fined him \$5,000.00. The Court has considered the transcript of the record filed with the Court; *Appellant's Brief*; and the *Brief of Appellee State of Ohio*.

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. O.R.C. § 119.12(N)

'Reliable' evidence is dependable or trustworthy; 'probative' evidence tends to prove the issue in question and is relevant to the issue presented; and 'substantial' evidence carries some weight or value." *Case W. Res. Univ.*, 76 Ohio St.3d at 178, 666 N.E.2d 1376, citing *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303. *Ohio Univ. v. Ohio Civ. Rts. Comm.*, 2008-Ohio-1034, ¶ 57, 175 Ohio App. 3d 414, 436, 887 N.E.2d 403, 420 (4th Dist.).

ALLEGATIONS

By *Notice of Summary Suspension and Opportunity for Hearing* dated May 8, 2024, Appellee alleged that Appellant “violated Section 4730.25(B)(2), Ohio Revised Code, and 4730.25(B)(3)” and that his “continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraph (1) below.” Paragraph (1) specifies that:

On or about September 23, 2022, through on or about March 14, 2024, you prescribed schedule II controlled substances to patients 1 through 11 as identified on the attached Patient Key (Key is confidential and to be withheld from public disclosure). You prescribed the schedule II controlled substances to the above listed patients without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.

PROCEDURAL HISTORY

A hearing was held on July 2, 2024. The Hearing Examiner issued a *Report and Recommendation* file-stamped August 1, 2024. The Hearing Examiner determined that Appellant prescribed schedule II controlled substances to 11 patients in violation of O.R.C. § 4730.411(A). The Hearing Officer further determined that Appellant’s prescriptive issuances were not otherwise permitted by O.R.C. § 4730.411(B)(14), as asserted by Appellant. By *Entry of Order* dated September 11, 2024, Appellee adopted the *Report and Recommendation* of the Hearing Officer and issued the sanctions now on appeal to this Court.

APPELLANT’S ARGUMENT

Appellant concedes that the prescriptions at issue do not meet the criteria of O.R.C. § 4730.411(A). However, Appellant asserts that the restrictions of O.R.C. § 4730.411(A) do not apply because they were issued from a qualifying location under O.R.C. § 4730.411(B)(14). Appellant further argues that the Hearing Officer improperly treated O.R.C. § 4730.411(B)(14) as

an affirmative defense and shifted to Appellant “the burden of establishing, by a preponderance of the evidence, that all of the provisions of R.C. 4730.411(B)(14) applied to the prescriptions at issue here.”¹

AFFIRMATIVE DEFENSE

Both the Hearing Officer and Appellee cite State ex rel. The Plain Dealer Publishing Co v. Cleveland, 75 Ohio St.3d 31 (1996), as authority for treating O.R.C. § 4730.411(B)(14) as an affirmative defense. The Court finds this reliance misplaced. Plain Dealer Publishing Co. dealt with the City of Cleveland’s alleged failure to release public records. The Ohio Supreme Court explained that:

An affirmative defense is a new matter which, assuming the complaint to be true, constitutes a defense to it. See *Davis v. Cincinnati, Inc.* (1991), 81 Ohio App.3d 116, 119, 610 N.E.2d 496, 498; Black's Law Dictionary (6 Ed.1990) 60. “An affirmative defense is any defensive matter in the nature of **190 a confession and avoidance. It admits that the plaintiff has a claim (the ‘confession’) but asserts some legal reason why the plaintiff cannot have any recovery on that claim (the ‘avoidance’).” (Footnote omitted.) 1 Klein, Browne & Murtaugh, Baldwin's Ohio Civil Practice (1988) 33, T 13.03.

Exceptions to disclosure under R.C. 149.43 are not in the nature of a confession and avoidance because the assertion of an exception does not admit the allegations *34 of an R.C. 149.43(C) mandamus action, *i.e.*, it does not concede that the requested records are “public records.”

Applying the Ohio Supreme Court’s logic to this case, Appellant has not admitted that Appellee has a claim (*i.e.* made a ‘confession’ of wrongfully prescribing), while asserting some legal reason why Appellee cannot have any recovery on that claim (*i.e.* ‘avoidance’ of sanctions for prohibited conduct). To the contrary, Appellant does not concede that the prescriptions were issued in violation of law. Appellee charged that Appellant prescribed schedule II controlled substances “without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.” Appellant has

¹ Report and Recommendation, p.13

responded that he issued the prescriptions pursuant to the authority given him by O.R.C. § 4730.411(B)(14), which is a provision specifically “set forth in the Ohio Revised Code.” This is not an affirmative defense, it is an outright denial of culpability.

O.R.C. § 4730.411(B)(14) PRESCRIPTIVE AUTHORITY

Per O.R.C. § 4730.411(B)(14), the restrictions of O.R.C. § 4730.411(A) do not apply if a physician assistant issues the prescription from:

A site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both, and the physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

O.R.C. § 4730.411(B)(14) sets forth a two-part requirement: organizational purpose and physician supervision. Appellee argues that Appellant failed to prove the site where he provided services, Rose Medical Clinic, was organized to provide “outpatient services for the treatment of mental health conditions, substance use disorders, or both.” As set forth above, Appellee misconstrues the burden of proof. Appellee notes that the record is devoid of any evidence of how Rose Medical Clinic was organized or how it held itself out. However, the lack of supporting evidence is a problem for the entity pursuing the case, not Appellant. While Appellant’s manner of conducting business certainly fails the smell test...the organizational and operational nature of Rose Medical Clinic remains, at best, an educated guess.

Both parties acknowledge that Appellant had entered into a supervisory agreement with a physician, Dr. Russell Lee-Wood. The parties disagree, however, about whether Dr. Lee-Wood was employed by Rose Medical Clinic. Appellant points out that the term “employed” is not defined by statute and invites the Court to interpret the statute’s use of “employed” as a past-tense

transitive verb² (as in: “yesterday I employed tweezers to remove a splinter”). Under Appellant’s interpretation, simply having utilized Dr. Lee-Wood’s services would suffice. Appellant’s argument ignores that the statute uses “employed” in the present-tense, indicative of a legal relationship between the physician and the site of the practice.

The record establishes that Rose Medical Clinic had no employer-employee relationship with Dr. Lee-Wood. Rose Medical Clinic obtained Dr. Lee-Wood’s services through Barton Associates, a locum tenens provider; and Rose Medical Clinic paid Barton Associates for Dr. Lee-Wood’s services. The term “locum tenens” is also not defined by statute, although Merriam-Webster defines it as “one filling an office for a time or temporarily taking the place of another → used especially of a doctor or clergyman”.³ Dr. Lee-Wood provided contracted services through a third-party, *in place of* a physician regularly “employed by” Rose Medical Clinic.

“Whether someone is an employee or an independent contractor is ordinarily an issue to be decided by the trier of fact.” State ex rel. Friendship Supported Living, Inc. v. Ohio Bureau of Workers' Comp., 172 Ohio St. 3d 414, 418 (2023). The trier of fact in this matter determined that Dr. Lee-Wood was not “employed by” Rose Medical Clinic as required by O.R.C. § 4730.411(B)(14). That determination is supported by reliable, probative, and substantial evidence and is in accordance with law.

CONCLUSION


The State Medical Board of Ohio determined that Appellant prescribed schedule II controlled substances without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code. The *Entry of Order* by the State Medical Board of Ohio dated

² Appellant cites the definition provided by merriam-webster.com

³ merriam-webster.com

September 11, 2024, is supported by reliable, probative, and substantial evidence and is in accordance with law. **The Order is therefore AFFIRMED. Costs to Plaintiff.**

5/19/2025
DATE:



JUDGE MATTHEW S. SCHMIDT
Court of Common Pleas #2
Ross County, Ohio

Benjamin J. Partee, Esq.
Kyle C. Wilcox, Esq. / D. Grant Wilson, Esq.
File

The Clerk of the Court is hereby directed to serve a copy of this Judgment Order and its date of entry upon all counsel of record and all parties not represented by counsel by personal service or if counsel is local by placing a copy in their box at the clerk's office or by U.S. Mail and to note service on the docket.
Judge Matthew Schmidt

The Clerk of the Court is hereby directed to serve a copy of this Judgment Order and its date of entry upon all counsel of record and all parties not represented by counsel by personal service or by U.S. Mail and to note service on the docket.
Judge Matthew Schmidt

Jordan L. Wheeler
ROSS COUNTY CLERK OF COURTS
2 N. PAINT ST., SUITE B
CHILLICOTHE, OHIO 45601

COLUMBUS OH 430

24 MAY 2025 PM 3 L

FIRST-CLASS



US POSTAGE AM PITNEY BOWES



ZIP 45601 \$ 000.97⁰
02 7W
0008030785 MAY 23, 2025

DANIEL WILSON
30 EAST BROAD STREET
26TH FLOOR
COLUMBUS, OH 43215

43215-341426



RECEIVED:
SEPTEMBER 25, 2024

THE STATE MEDICAL BOARD OF OHIO
ATTN: Case Control Office
30 E. Broad Street, 3rd Floor
Columbus, Ohio 43215

In the Matter of:

RUFUS FRANK LOWMAN, P.A.

Hearing Examiner: James Wakley

Case No. 24-CRF-0092

NOTICE OF APPEAL

Now comes Respondent, by and through undersigned counsel, and hereby gives Notice of Appeal of the Entry of Order issued by the State Medical Board of Ohio in the above-captioned matter on September 11, 2024. Respondent submits that the Agency's Order is not supported by reliable, probative evidence and is not in accordance with law.

Respectfully submitted,

S/ Benjamin J. Partee

Benjamin J. Partee (0080947)
Attorney for Respondent
43 N. Paint St.
Chillicothe, OH 45601
TEL (740) 772-1222
front@ChillicotheDefense.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Respondent's List of Witnesses and Documents was served via email on this 7th day of June 2024, upon the following:

Kyle C. Wilcox, Assistant Attorney General
Kyle.Wilcox@OhioAGO.gov

S/ Benjamin J. Partee

Benjamin J. Partee (0080947)



**State Medical
Board of Ohio**

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
www.med.ohio.gov

September 11, 2024

VIA EMAIL ONLY

Rufus Frank Lowman, P.A.
16700 Charleston Pike
Kingston, OH 45644
Rlowman39@gmail.com

RE: Case No. 24-CRF-0092

Dear Mr. Lowman:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of James T. Wakley, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 11, 2024, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Any party desiring to appeal this order shall file a notice of appeal with the State Medical Board of Ohio, located at 30 E. Broad St., 3rd Floor, Columbus, Ohio 43215, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

The notice of appeal shall also be filed by the appellant with the court of common pleas of Franklin County or the court of common pleas in the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If the party appealing is not a resident of and has no place of business in this state, the party shall appeal to the court of common pleas of Franklin County. In filing a notice of appeal with both the Medical Board and the court, the notice that is filed may be either the original notice or a copy of the original notice.

The party filing the appeal shall comply with all requirements of Ohio Revised Code section 119.12 (R.C. 119.12). The notice of appeal shall be filed within fifteen days after the service of the notice of the Medical Board order as provided in section 119.05 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in blue ink that reads "Kim Rothermel MD".

Kim G. Rothermel, M.D.
Secretary

KGR:jam
Enclosures

CC: Benjamin J. Partee, Esq.
43 N. Paint St.
Chillicothe OH 45601
Bjp.esq@gmail.com

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of James T. Wakley, Esq., State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 11, 2024, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Rufus Frank Lowman, P.A., Case No. 24-CRF-0092 as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.





Kim G. Rothermel, M.D.

September 11, 2024

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 24-CRF-0092

RUFUS FRANK LOWMAM, P.A.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 11, 2024.

Upon the Report and Recommendation of James T. Wakley, Esq., State Medical Board Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. PERMANENT REVOCATION: The license of Rufus Frank Lowman, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.
- B. FINE: Within thirty days of the effective date of this Order, Mr. Lowman shall remit payment in full of a fine of five thousand dollars (\$5,000.00). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.

This Order shall become effective immediately upon the date of service of the notification of approval by the Board.



A handwritten signature in blue ink, reading "Kim G. Rothermel, M.D.", written over a horizontal line.

Kim G. Rothermel, M.D.
Secretary

September 11, 2024
Date

RECEIVED:
August 1, 2024

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 24-CRF-0092

Rufus Frank Lowman, P.A.,

*

Hearing Examiner Wakley

Respondent.

*

Appearances:

Dave Yost, Attorney General of Ohio, and Brandon Puckett, Assistant Attorney General, for the State of Ohio. Benjamin Partee, Esq. on behalf of Mr. Lowman.

Hearing Date: July 2, 2024.

I. PROCEDURAL HISTORY

By letter dated May 8, 2024, the Medical Board notified Rufus Frank Lowman, P.A., that, pursuant to R.C. 4730.25(G), his license to practice as a physician assistant in the State of Ohio was summarily suspended. The Board alleged that it had clear and convincing evidence that Mr. Lowman's continued practice presented a danger of immediate and serious harm to the public. Specifically, the Board alleged that the acts, conduct, and/or omissions of Mr. Lowman as stated in paragraph (1) of the Notice Letter, individually and/or collectively, constituted a "[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board" as that clause is used in R.C.4730.25(B)(2), to wit: R.C. 4730.41(B) and R.C. 4730.411(A). The Board further alleged that Mr. Lowman's acts, conduct, and/or omissions, individually and/or collectively, constituted "[v]iolating 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," as that clause is used in R.C. 4730.25(B)(3), to wit: R.C. 4730.41(B) and R.C. 4730.411(A). *See* Exhibit ("Ex.") 1 at 7-8.

On May 16, 2024, Mr. Lowman requested a hearing by email. *See* Ex. 1 at 1. By agreement of the parties, the hearing was scheduled for July 2, 2024.

II. SUMMARY OF THE EVIDENCE¹

Rufus Frank Lowman, P.A., is a 2010 graduate of Nova Southeastern University's Physician Assistant program. Transcript ("T.") at 12-13. He was first licensed in Ohio in 2012 and is certified by the National Commission on Certification of Physician Assistants. T. at 13. He was previously licensed as a physician assistant in Florida, but that license has lapsed. T. at 13.

Mr. Lowman operates the Rose Medical Clinic in Chillicothe, Ohio through RTTS Services Corporation. T. at 14. Mr. Lowman owns fifty-one percent of the shares in RTTS. T. at 15, 19. According to Mr. Lowman, the majority of the practice at Rose Medical Clinic – approximately eighty percent – is mental health and substance abuse treatment. The other twenty percent is family medicine. T. at 17, 63. Mr. Lowman is the sole medical provider at the Rose Medical Clinic. T. at 18-19.

According to Mr. Lowman, his substance abuse/mental health treatment services include providing buprenorphine and Vivitrol. T. at 65. He described how he conducts urine drug screens at every visit for patients being treated for substance abuse. T. at 65.

As a physician assistant, Mr. Lowman is required to work under the supervision of a licensed physician. *See* R.C. 4730.02(C); T. at 20. In May 2020, Mr. Lowman entered into a supervision agreement with Dr. Russell Lee-Wood. T. at 20; Ex. 3. According to Mr. Lowman, he found Dr. Lee-Wood through Barton and Associates – "kind of like a locum's facility. They provide supervising physicians to Nurse Practitioners and P.A.s." T. at 24. RTTS pays Barton & Associates \$925.00 a month for the doctor's services. T. at 24; Ex. 4b at 2:50. Though RTTS pays Barton & Associates for Dr. Lee-Wood's services, Mr. Lowman believed that his entire payment went to Dr. Lee-Wood. T. at 63. In an interview conducted with a Board investigator, Dr. Lee-Wood described himself as an indirect employee of the Rose Medical Clinic. Ex. 4b at 5:21-:23.

The supervision agreement specified that Dr. Lee-Wood was agreeing to supervise Mr. Lowman at his practice outside of a health care facility² and defined, in the most general of terms, the relationship between the two practitioners. T. at 21-22; Ex. 3. Dr. Lee-Wood only provided supervision to Mr. Lowman remotely. While Rose Medical Clinic was located in Chillicothe,

¹ All exhibits and the transcript of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

² Pursuant to R.C. 4730.01(B), a "health care facility" includes: (1) A hospital registered with the department of health under section 3701.07 of the Revised Code; (2) A health care facility licensed by the department of health under section 3702.30 of the Revised Code; (3) Any other facility designated by the state medical board in rules adopted pursuant to division (B) of section 4730.08 of the Revised Code.

Ohio, Dr. Lee-Wood practiced in Barnesville, Ohio – approximately two hours away. T. at 22. To date, more than four years after entering into the supervision agreement, Mr. Lowman has never met Dr. Lee-Wood. T. at 23. Dr. Lee-Wood has never seen any of Mr. Lowman’s patients. T. at 24. And Dr. Lee-Wood has never been to the Rose Medical Clinic. Ex. 4b at 2:18.

Mr. Lowman testified that he was in frequent contact with Dr. Lee-Wood. According to Mr. Lowman, he would reach out to Dr. Lee-Wood “whenever I would operate outside my scope of practice or was dealing with something that may go into my knowledge base or go outside my knowledge base, I would consult with him.” T. at 61. Mr. Lowman also indicated that Dr. Lee-Wood was available to consult with him “at all times.” T. at 61-62.

During the course of the investigation that led to this matter, Dr. Lee-Wood was interviewed by an investigator from the Board. That interview was recorded. *See* Ex. 4b. During that interview, Dr. Lee-Wood was asked how he performs his duties as a supervising physician for Mr. Lowman. *See* Ex. 4b at 1:54. Dr. Lee-Wood responded that he accesses Mr. Lowman’s EMR “about once a month, 12 charts or so.” Ex. 4b at 2:04-06. When asked whether he ever met with Mr. Lowman face-to-face, Dr. Lee-Wood indicated that they will occasionally speak by FaceTime,³ but that their communication was primarily by telephone. Ex. 4b at 3:02-:06. According to Dr. Lee-Wood, Mr. Lowman reached out to him 2-3 times per week on average. Ex. 4b at 4:35.

When asked how he reviews Mr. Lowman’s prescribing, Dr. Lee-Wood told the investigator that he would log into Mr. Lowman’s EMR system and select and review charts at random and that Mr. Lowman would occasionally call him. *See* Ex. 4b at 3:29-:53. But, according to Dr. Lee-Wood, those consultations would not be documented. *Id.* The Board’s investigator pointedly asked Dr. Lee-Wood whether he would know how many “C2”⁴ prescriptions that Mr. Lowman had written in the last 12 months. Dr. Lee-Wood replied “I’m afraid I don’t.” Ex. 4b at 3:54-4:00.

Mr. Lowman confirmed that Dr. Lee-Wood’s supervision largely consisted of reviewing 10-15 patient charts per month. T. at 62. After that review, Mr. Lowman and Dr. Lee-Wood would discuss the cases and any “errors” that Mr. Lowman may have made.⁵ T. at 62.

The Board has alleged that Mr. Lowman wrote prescriptions for 11 patients that exceeded his authority as a physician’s assistant. *See* Ex. 1 at 7-8. Specifically, Mr. Lowman is alleged to have written prescriptions for schedule II controlled substances for impermissible durations and outside

³ Mr. Lowman denied ever FaceTiming with Dr. Lee-Wood. T. at 61.

⁴ Schedule II controlled substance.

⁵ Mr. Lowman submitted copies of what appear to be text messages between him and Dr. Lee-Wood. *See* Ex. B. Those messages were never discussed at hearing. As no context for the relevance of those messages has been given and no relevance is apparent, this hearing examiner has accorded them no weight.

of the limited circumstances in which a physician assistant may prescribe such drugs. *Id.* Those records, contained within State’s Exhibit 2, are summarized below.

Patient 1

Patient 1 was a 31-year-old man who Mr. Lowman did not recall at hearing. T. at 77; Ex. 5; Ex. 2 at 3. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 1					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
02/27/2024	Percocet 5/325mg	1 tab every 6 hours	10	2.5	3

Patient 2

Patient 2 was a 41-year-old woman who Mr. Lowman did not recall at hearing. T. at 79; Ex. 5; Ex. 2 at 5. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 2					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
04/03/2023	Oxycodone 5mg	1 tab every 6 hours	28	7	5
04/10/2023	Oxycodone 5mg	1 tab every 6 hours	28	7	6
04/20/2023	Oxycodone 5mg	1 tab every 6 hours	28	7	7

All of Mr. Lowman’s prescriptions to Patient 2 were “prn pain.” *See* Ex. 2 at 5, 6, 7.

Patient 3

Patient 3 was a 53-year-old man who Mr. Lowman saw for pain management. T. at 79; Ex. 5; Ex. 2 at 9. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 3					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
02/10/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	28	7	9
02/27/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	28	7	10

The February 27, 2023 prescription indicates that the patient was to take the medication as needed for “shoulder pain.” *See* Ex. 2 at 10.

Patient 4

Patient 4 was a 30-year-old woman that Mr. Lowman saw for “an isolated incident – like a joint injury or something like that.” T. at 79; Ex. 5; Ex. 2 at 12. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 4					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
12/09/2022	Percocet 5/325mg	1 tab every 6 hours	20	5	12

Patient 5

Patient 5 was a 46-year-old man that Mr. Lowman saw for “severe” psoriasis and “crippling” arthritis. T. at 79; Ex. 5; Ex. 2 at 16. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 5					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
04/14/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	16
05/13/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	17
06/08/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	18
07/13/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	19
07/22/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	20
08/16/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	14	3.5	21
09/06/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	28	7	22
10/18/2023	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	23
11/22/2023	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	24
11/22/2023	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	25
1/18/2024	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	26
02/15/2024	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	27
03/14/2024	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	28
12/21/2023	Oxy/Acet. 10/325mg	1 tab every 6 hours	28	7	29

On April 14, 2023, Mr. Lowman prescribed Patient 5 14 Oxycodone/Acetaminophen 5/325mg tablets, to be taken one tablet every six hours “for joint pain.” Ex. 2 at 16. On May 13, June 8, July 13, July 22, and August 16, 2023, Mr. Lowman prescribed the same medication, to be taken on the same schedule – again “for joint pain.” Ex. 2 at 17-21. The remainder of the prescriptions that Mr. Lowman issued to Patient 5 indicated that he should take the more potent Oxycodone/Acetaminophen 10/325mg as needed for “low back pain” or lumbago. Ex. 2 at 23-29.

Patient 6

Patient 6 was a 57-year-old woman that Mr. Lowman described as suffering from terminal pancreatic cancer. T. at 42, 67, 80; Ex. 5; Ex. 2 at 44. Over the course of approximately two months, Mr. Lowman prescribed Patient 6 approximately one thousand tablets and five fentanyl

patches. T. at 44; Ex. 2 at 44. Mr. Lowman described Patient 6 as an outlier from his usual prescribing practices. T. at 67. According to Mr. Lowman, he prescribed so many pain medications to Patient 6 because “she had been skipped over by other providers on her complaint of abdominal pain [] and [I] determined that she had pancreatic cancer and liver failure because of the pancreatic cancer.” T. at 67. Mr. Lowman described his treatment of Patient 6 as “conservative.” T. at 67. He also indicated that he was in constant contact with Dr. Lee-Wood about his treatment of this patient. *Id.*

Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 6					
Date of Rx	Drug	Frequency	# of Units	Days supply	Ex. 2 Page
05/01/2023	Fentanyl 25mcg/hr patch	1 every 72 hours	5	15	44
05/25/2023	Morphine 15mg	1 tab every 4 hours	180	30	43
05/25/2023	MS Contin ER 30mg	1 tab every 8 hours	90	30	42
05/30/2023	MS Contin ER 15mg	1 tab every 8 hours	90	30	41
06/09/2023	Dilaudid 4mg	1 tab every 4 hours	180	30	40
06/12/2023	MS Contin ER 30mg	1 tab every 8 hours	90	30	36
06/12/2023	MS Contin ER 30mg	1 tab every 8 hours	90	30	38
06/13/2023	MS Contin ER 15mg	1 tab every 8 hours	45	15	39
06/15/2023	Morphine 15mg	1 tab 4x day	60	15	37
06/27/2023	MS Contin ER 15mg	1 tab every 8 hours	45	15	35
06/29/2023	Morphine 15mg	1 tab 4x day	60	15	34
07/11/2023	MS Contin ER 30mg	1 tab every 8 hours	45	15	32
07/11/2023	MS Contin ER 15mg	1 tab every 8 hours	45	15	33

Nearly all of Mr. Lowman’s prescriptions to Patient 6 indicate that the medications are to be taken for pain or “severe pain.”

Patient 7

Patient 7 was a 53-year-old woman suffering from cancer on her ankle. T. 80; Ex. 5; Ex. 2 at 46. Prescription records indicate that Mr. Lowman prescribed the following to this patient for “ankle pain”:

Patient 7					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
10/05/2023	Hydrocodone 5/325mg	1 tab every 6 hours	21	5.25	46

Patient 8

Patient 8 was a 42-year-old woman who presented to Mr. Lowman after a fall. T. at 80; Ex. 5; Ex. 2 at 48-57. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 8					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
07/31/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	12	3	57
08/03/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	12	3	48-49, 53
10/06/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	12	3	58

The earliest prescription that Mr. Lowman gave to Patient 8 was indicated simply for pain. *See* Ex. 2 at 57. Mr. Lowman indicated that the August 3rd prescription was for “chest wall pain.” Ex. 2 at 53. The October 6th prescription was given to Patient 8 to alleviate “abdominal pain.” Ex. 2 at 58.

Patient 9

Patient 9 was a 34-year-old woman when Mr. Lowman first prescribed schedule II controlled substances to her; Mr. Lowman did not recall her presenting problem. T. at 80; Ex. 5; Ex. 2 at 59. Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 9					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
07/31/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	12	3	57, 59
10/06/2023	Oxy/Acet. 5/325mg	1 tab every 6 hours	12	3	58, 60

The October 6th prescription indicates that the medication was to treat “abdominal pain.” Ex. 2 at 60.

Patient 10

Patient 10 was a 55-year-old woman that Mr. Lowman described as having “debilitating back pain that made it so that she wasn’t able to do her job properly and get up and walk easily.” T. at 80-81; Ex. 5; Ex. 2 at 62.

Prescription records indicate that Mr. Lowman prescribed the following to this patient:

Patient 10					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
09/23/2022	Hydrocodone 5/325mg	1 tab every 6 hours	20	5	62, 68
02/24/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	63, 69
03/02/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	64, 70
03/13/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	64, 71
03/20/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	64, 72
04/14/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	65, 73
10/26/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	66, 74
11/21/2023	Oxy/Acet. 7.5/325mg	1 tab every 8 hours	21	7	67, 75

The first prescription that Mr. Lowman wrote for Patient 3 indicates that she was to take the medication for “knee pain.” Ex. 2 at 62. Beginning with a February 24, 2023 prescription, Mr. Lowman indicated that she was to take oxycodone/acetaminophen 7.5/325mg for back pain. Ex. 2 at 64.

Patient 11

Patient 11 was a 36-year-old female veteran who Mr. Lowman reported seeing for pain. T. at 81; Ex. 5; Ex. 2 at 78. According to Mr. Lowman, Patient 11 had undergone total reconstruction of her face and he began prescribing her pain medication until she was able to get into a pain management practice. T. at 81.

Patient 11					
Date of Rx	Drug	Frequency	# of Pills	Days supply	Ex. 2 Page
04/19/2023	Oxycodone 10mg	1 tab every 4 hours	35	~5	78
04/26/2023	Oxycodone 10mg	1 tab every 4 hours	35	~5	79
05/03/2023	Oxycodone 10mg	1 tab every 4 hours	35	~5	80
05/10/2023	Oxycodone 10mg	1 tab every 4 hours	35	~5	81
05/17/2023	Oxycodone 10mg	1 tab every 4 hours	35	~5	82

R.C. 4730.411(A) permits a physician assistant to prescribe schedule II controlled substances when three conditions are met:

- (1) The patient is in a terminal condition, as defined in section 2133.01⁶ of the Revised Code.
- (2) The physician assistant's supervising physician initially prescribed the substance for the patient.
- (3) The prescription is for an amount that does not exceed the amount necessary for the patient's use in a single, twenty-four-hour period.

R.C. 4730.411(B) lifts those limitations, however, if the physician assistant issues the prescription to the patient from certain defined practice types.

Mr. Lowman did not contest that he prescribed schedule II controlled substances to 11 patients as alleged in the Notice Letter. Mr. Lowman, however, argued that he was permitted to do so by R.C. 4730.411(B)(14). *See* T. at 64, 68. That provision permits physician assistants to issue prescriptions for schedule II controlled substances from:

[a] site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both, and the physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

Under cross-examination, Mr. Lowman attempted to explain how his prescribing of schedule II narcotics was related to mental health treatment:

Q. [] I think earlier you stated that, you know, the majority of your practice and your schedule II prescribing was for mental health reasons; is that accurate?

⁶ “Terminal condition” means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, both of the following apply:

- (1) There can be no recovery.
- (2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

A. Yes.

Q. But not all of these prescriptions contained in State's Exhibit 2 lists what prescriptions are for, but the ones that do don't seem to have anything to do with mental health treatment. Why is that?

A. No. Pain control can exacerbate mental health, so with severe pain comes mental health anguish, substance abuse, all of that; so to alleviate some of the pain, you alleviate some of the risk of substance abuse.

Q. So you're saying that you were practicing pain management or were you practicing mental health care?

A. It was a -- attempting to curb one of the reasons for a break in mental health. They were receiving pain medicine short term to get them to pain management, but --

Q. Did you refer these patients out? Sorry.

A. Yes, yes. I refer all pain patients to a pain management doctor.

Q. Okay. But I believe your testimony earlier was that you believe that you could write these prescriptions because you were largely doing so in a mental health capacity; is that accurate?

A. The majority of them do have mental health problems, and pain can exacerbate that, so I had to alleviate something.

Q. Okay. So you were treating both the -- the pain management until they could get referred out as a way to also treat the mental health issues; is that -- is that correct?

A. To not make the mental health worse than what it already was, because some of the patients do have anger management problems.

T. at 51-53.

When asked how he would change his practice after this matter is resolved, Mr. Lowman indicated that he would no longer prescribe schedule II controlled substances. T. at 64. Mr. Lowman also testified that he believed that all of his prescriptions were medically appropriate. T. at 69.

III. BOARD ALLEGATIONS

In the Notice of Summary Suspension and Opportunity for Hearing, the Board alleged the following:

- 1) On or about September 23, 2022, through on or about March 14, 2024, [Mr. Lowman] prescribed schedule II controlled substances to patients 1 through 11 as identified on the attached Patient Key (Key is confidential and to be withheld from public disclosure). [Mr. Lowman] prescribed the schedule II controlled substances to the above listed patients without the supervision or approval of a physician and/or without the prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.

IV. FINDINGS OF FACT

1. Rufus Frank Lowman, P.A., has been licensed as a physician assistant in the State of Ohio since January 12, 2012.⁷
2. Mr. Lowman, through RTTS Services Corporation, operates the Rose Medical Clinic in Chillicothe, Ohio.
3. At all times relevant to this matter, the Rose Medical Clinic was a general medical practice and was not a behavioral health practice as that term is used in R.C. 4730.411(B)(14).
4. On or about May 7, 2020, Mr. Lowman entered into a supervision agreement with Dr. Russell Lee-Wood. Dr. Lee-Wood was, at all times relevant to this matter, Mr. Lowman's sole collaborating physician.
5. On or about September 23, 2022, through on or about March 14, 2024, Mr. Lowman prescribed schedule II controlled substances to Patients 1 through 11.
6. Of the 11 patients identified in the confidential Patient Key, only Patient 6 suffered from a terminal condition as that phrase is used in R.C. 2133.01.
7. None of the medications prescribed by Mr. Lowman in this matter were originally prescribed by Dr. Russell Lee-Wood.
8. All of the prescriptions identified in State's Exhibit 2 were for periods in excess of a single, twenty-four-hour period.

⁷ elicense.ohio.gov (accessed July 25, 2024).

V. CONCLUSIONS OF LAW

Mr. Lowman's acts, conduct, or omissions, as found in paragraphs 5-8 above, individually and/or collectively constitute "failure to comply with the requirements of Chapter 4731. of the Revised Code or any rules adopted by the board," as that clause is used in R.C. 4730.25(B)(2), to wit: R.C. 4730.41(B) and R.C. 4730.411(A).

Further, Mr. Lowman's acts, conduct, and/or omissions as found in paragraphs 5-8 above, individually and/or collectively, constitute "[v]iolating 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," as that clause is used in R.C. 4730.25(B)(3), to wit: R.C. 4730.41(B) and R.C. 4730.411(A).

Pursuant to R.C. 4730.252, the Board is authorized to impose a civil penalty for this violation. The Board's fining guidelines provide as follows:

Maximum fine: \$20,000.00

Minimum fine: \$3,500.00

RATIONALE FOR THE PROPOSED ORDER

Ohio law is very clear. A physician assistant may not prescribe schedule II controlled substances unless three conditions are met. First, the patient receiving the prescription is in a terminal condition as defined by R.C. 2133.01(AA). Second, the physician assistant's supervising physician – in this case, Dr. Lee-Wood – initially prescribed the substance for the patient. And, third, the prescription is for an amount that does not exceed the amount necessary for the patient's use in a single, twenty-four-hour period. R.C. 4730.411(A)(1)-(3). None of Mr. Lowman's prescriptions detailed above meet all three of those requirements. And Mr. Lowman has not really argued that any did. At most, Lowman argued that Patient 6 met the definition of suffering from a terminal condition. But even if that were true, his prescriptions to her do not meet the other two requirements set forth by statute. Dr. Lee-Wood had no relationship with Patient 6 and the prescriptions Mr. Lowman issued grossly exceeded the amount needed for a single twenty-four-hour period. Based upon this uncontested evidence, the State has met their burden in showing that Mr. Lowman violated R.C. 4730.41(B) and 4730.411(A).

Mr. Lowman has asserted, however, that he was privileged to prescribe schedule II controlled substances to these 11 patients by operation of R.C. 4730.411(B)(14). That provision permits a physician assistant to prescribe controlled substances outside of the limitations set forth above if the physician assistant issued the prescription to the patient from:

1. A site where a behavioral health practice is operated that does not qualify as a location otherwise described in division (B) of this section, but only if the practice is organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both; and

2. The physician assistant providing services at the site of the practice has entered into a supervisory agreement with at least one physician who is employed by that practice.

The exception listed above represents an affirmative defense to the violation of R.C. 4730.411(A) alleged by the Board. An affirmative defense is “a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true.” *State ex rel Parker Bey v. Bureau of Sentence Computation*, 166 Ohio St. 3d 497, 501 (Ohio 2022)(citation omitted). “An affirmative defense is a new matter which, assuming the complaint to be true, constitutes a defense to it.” *State ex rel The Plain Dealer Publishing Co. v. Cleveland*, 75 Ohio St. 3d 31, 33 (Ohio 1996). As an affirmative defense, Mr. Lowman bore the burden of establishing, by a preponderance of evidence, that all of the provisions of R.C. 4730.411(B)(14) applied to the prescriptions at issue here. He has manifestly failed to meet that burden.

First, Mr. Lowman argues that his practice should be considered a “behavioral health practice” that is “organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both.” Those phrases are not defined anywhere in the Revised Code. Thus, each must be given its plain meaning. Mr. Lowman has offered no evidence – aside from his own testimony – that the Rose Medical Clinic is a behavioral health practice organized to provide outpatient services for the treatment of mental health conditions, substance use disorders, or both. No evidence was provided as to how the Rose Medical Clinic was organized – such as certification as a community mental health or addiction service provider by the Ohio Department of Mental Health and Addiction Services⁸ or other evidence that the practice held itself out as a behavioral health or substance abuse practice. Nor were any patient records offered to support Mr. Lowman's contention that approximately 80% of his practice was behavioral health or substance abuse treatment. Rather, the evidence adduced at hearing tends to show that the Rose Medical Clinic is a general medical practice organized to treat the variety of conditions typically treated by a general practitioner. Proof of that fact lies in the 11 patients at issue here. Mr. Lowman was not able to identify a single mental health condition suffered by any of the 11 patients cited by the Board despite having more than two months to prepare for this hearing. All of the 11 patients at issue in this matter appear to have been treated for pain and pain alone. Even if Mr. Lowman treats others for behavioral health issues, that does not render the Rose Medical Clinic a behavioral health practice, nor does it justify the unlimited prescribing of schedule II controlled substances to others. Mr. Lowman has thus failed in his burden to establish the first element of the R.C. 4730.411(B)(14) exception to the prescribing rule.

He also fails on the second. To be excused from the limitation on prescribing set forth in subsection (A) of R.C. 4730.411, Mr. Lowman must establish that the Rose Medical Clinic employed his supervising physician, Dr. Lee-Wood. Mr. Lowman, again, has offered nothing other than his own testimony to show that the practice employed Dr. Lee-Wood. And that testimony is not credible. Dr. Lee-Wood has never set foot in the Rose Medical Clinic. Nor has he treated any of the patients at issue in this case. By his own admission, Mr. Lowman has never

⁸ See R.C. 5119.36.

even met Dr. Lee-Wood. Mr. Lowman contracted Dr. Lee-Wood through a third-party and pays only \$925.00 per month for Dr. Lee-Wood's services. The supervision agreement between Dr. Lee-Wood and Mr. Lowman does not, standing alone, establish that Dr. Lee-Wood was employed by the Rose Medical Clinic.

A physician assistant is intended to work under the supervision of a licensed physician because he or she possesses neither the training nor experience to practice wholly independently. That is why physician assistants may only perform certain limited functions outside of highly structured environments like hospitals. To call what Dr. Lee-Wood did here supervision stretches the bounds of credulity. R.C. 4730.21(A) states that "[t]he supervising physician of a physician assistant exercises supervision, control, and direction of the physician assistant. A physician assistant may practice in any setting within which the supervising physician has supervision, control, and direction of the physician assistant." The evidence offered at hearing is that Mr. Lowman practiced almost entirely free of supervision. And there is no evidence that Dr. Lee-Wood exercised any control over Mr. Lowman's actions. In these 11 cases, Mr. Lowman grossly exceeded the limited prescriptive authority granted to physician assistants in this state. He was not practicing as a mental health provider, but as a pain management provider for these 11 patients. His suggestion that those prescriptions were authorized by statute is absurd.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION:** The license of Rufus Frank Lowman, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.
- B. **FINE:** Within thirty days of the effective date of this Order, Mr. Lowman shall remit payment in full of a fine of five thousand dollars (\$5,000.00). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.

This Order shall become effective immediately upon the date of service of the notification of approval by the Board.

/s/ James T. Wakley _____

James T. Wakley
Chief Hearing Examiner



EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 11, 2024 IN THE MATTER OF RUFUS FRANK LOWMAN, P.A.

.....
REPORTS AND RECOMMENDATIONS

Dr. Feibel asked the Board to consider the Report and Recommendation appearing on the agenda: Rufus Frank Lowman, P.A.; Krisell Dawn Fedrizzi, D.O.; Seyoum D. Bage, M.D.; Sagar R. Patel, M.D.; and James P. Mima.

Dr. Feibel asked all Board members the following questions:

- 1.) Has each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in each of the Reports and Recommendations?
- 2.) Does each member of the Board understand that the Board’s disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from Dismissal to Permanent Revocation or Permanent Denial?
- 3.) Does each member of the Board understand that in each matter eligible for a fine, the Board’s fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000?

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Kakarala	- aye
	Dr. Bechtel	- aye
	Dr. Soin	- aye
	Ms. Brumby	- aye
	Dr. Reddy	- aye
	Ms. Montgomery	- aye
	Dr. Lewis	- aye
	Dr. Johnson	- aye
	Dr. Boyle	- aye
	Dr. Feibel	- aye

In accordance with the provision in Ohio Revised Code 4731.22(F)(2), specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Kakarala served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matter of Dr. Patel and Mr. Mima.

During these proceedings, no oral motions may be made by either party.
.....

Rufus Frank Lowman, P.A.

.....
Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Mr. Lowman. Dr. Lewis seconded the motion.

.....
A vote was taken on Dr. Johnson's motion to approve:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Kakarala	- abstain
	Dr. Bechtel	- aye
	Dr. Soin	- aye
	Ms. Brumby	- aye
	Dr. Reddy	- aye
	Dr. Lewis	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Boyle	- abstain
	Dr. Feibel	- aye

The motion to approve carried.



**State Medical
Board of Ohio**

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
www.med.ohio.gov

May 8, 2024

Case number: 24-CRF-0092

Rufus Frank Lowman P.A.
16700 Charleston Pike
Kingston OH 45644-9584
rlowman39@gmail.com


Dear Mr. Lowman:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on May 8, 2024, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4730.02(A), Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the matters set forth in the Notice of Summary Suspension and Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of service of this notice. Further information concerning such hearing is contained within the Notice of Summary Suspension and Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO

 *Kim G. Rothermel MD* 5/8/24

Kim G. Rothermel, M.D.
Secretary

KGR/PJH/lv
Enclosures

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on May 8, 2024, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of Rufus Frank Lowman P.A., Case number: 24-CRF-0092 as they appear in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio and in its behalf.



Kim G. Rothermel M.D.
Kim G. Rothermel, M.D., Secretary

5/8/24
May 8, 2024

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
:
RUFUS FRANK LOWMAN P.A. :
:
CASE NUMBER: 24-CRF-0092 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 8th day of May 2024.

Pursuant to Section 4730.25(G), Ohio Revised Code, and upon recommendation of Kim G. Rothermel, M.D., Secretary, and Harish Kakarala, M.D., Supervising Member; and

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that there is clear and convincing evidence that Mr. Lowman has violated Section 4730.25(B)(2), Ohio Revised Code, and 4730.25(B)(3)), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein; and,

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Mr. Lowman's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 8th day of May 2024:

It is hereby ORDERED that the certificate of Rufus Frank Lowman P.A. to practice as a physician assistant in the State of Ohio be summarily suspended.

It is hereby ORDERED that Mr. Lowman, P.A. shall immediately cease the practice as a physician assistant in Ohio and immediately refer all active patients to other appropriate physicians or physician assistants.

This Order shall become effective immediately.



Kim G. Rothermel

Kim G. Rothermel, M.D.
Secretary

5-8-24

May 8, 2024



EXCERPT FROM THE DRAFT MINUTES OF MAY 8, 2024

**NOTICES OF OPPORTUNITY FOR HEARING, ORDERS OF SUMMARY SUSPENSION,
ORDERS OF IMMEDIATE SUSPENSION, AND ORDERS OF AUTOMATIC
SUSPENSION**

**RUFUS FRANK LOWMAN, P.A. – NOTICE OF SUMMARY SUSPENSION AND
OPPORTUNITY FOR HEARING**

Dr. Johnson moved to approve and issue proposed Citation #6, a Notice of Summary Suspension and Opportunity for Hearing. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Bechtel	- aye
	Dr. Soin	- aye
	Ms. Brumby	- aye
	Dr. Reddy	- aye
	Dr. Lewis	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Boyle	- abstain
	Dr. Feibel	- aye

The motion carried.



**NOTICE OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING**

May 8, 2024

Case number: 24-CRF-0092

Rufus Frank Lowman, P.A.
16700 Charleston Pike
Kingston OH 45644-9584
rlowman39@gmail.com

Dear Mr. Lowman:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Section 4730.25(B)(2), Ohio Revised Code, and 4730.25(B)(3) and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraph (1), below.

Therefore, pursuant to Section 4730.25(G), Ohio Revised Code, and upon recommendation of Kim G. Rothermel, M.D., Secretary, and Harish Kakarala, M.D., Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your license or certificate to practice as a physician assistant in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice as a physician assistant in Ohio.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the Board intends to determine whether or not to limit, revoke, permanently revoke or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse to renew or reinstate your license or certificate to practice as a physician assistant, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about September 23, 2022, through on or about March 14, 2024, you prescribed schedule II controlled substances to patients 1 through 11 as identified on the attached Patient Key (Key is confidential and to be withheld from public disclosure). You prescribed the schedule II controlled substances to the above listed patients without the supervision or approval of a physician and/or without the
-

prescriptive authority given to Physician Assistants as set forth in the Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Sections 4730.41(B) and 4730.411(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[V]iolating 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,” as that clause is used in Section 4730.25(B)(3), Ohio Revised Code, to wit: Sections 4730.41(B) and 4730.411(A).

Furthermore, for any violations that occurred on or after September 29, 2015, the Board may impose a civil penalty in an amount that shall not exceed twenty thousand dollars, pursuant to Section 4730.252, Ohio Revised Code. The civil penalty may be in addition to any other action the Board may take under section 4730.25, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4730., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning these matters. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of service of this notice.

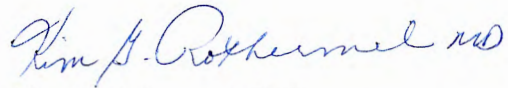
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of service of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse to renew or reinstate your license or certificate to practice, or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4730.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, 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 license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate.”

Copies of the applicable sections are enclosed for your information.

THE STATE MEDICAL BOARD OF OHIO



Kim G. Rothermel, M.D.
Secretary

KGR/PJH/lv
Enclosures

Via email: rlowman39@gmail.com

cc: BY PERSONAL DELIVERY

rlowman39@gmail.com

**IN THE MATTER OF
Rufus Frank Lowman, P.A.
24-CRF-0092**

**May 8, 2024, NOTICE OF
OPPORTUNITY FOR HEARING -
PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**