[Cite as *ATS Inst. of Technology v. Ohio Bd. of Nursing*, 2012-Ohio-6030.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

ATS Institute of Technology, Associate of Applied Science in Nursing Program,	:	
Appellant-Appellant/ [Cross-Appellee],	:	
v.	:	No. 12AP-385 (C.P.C. No. 11CVF11-14460)
Ohio Board of Nursing,	:	(REGULAR CALENDAR)
Appellee-Appellee/ [Cross-Appellant].	:	

D E C I S I O N

Rendered on December 20, 2012

Collis, Smiles & Collis, LLC, and *Elizabeth Y. Collis; Dinsmore & Shohl, LLP*, and *Eric J. Plinke*; *Baker & Hostetler LLP*, and *Richard Siehl*, for appellant.

Michael DeWine, Attorney General, and *Henry G. Appel*, for appellee Ohio Board of Nursing.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Appellant, ATS Institute of Technology, Associate of Applied Science in Nursing Program, appeals from a judgment of the Franklin County Court of Common Pleas affirming, as modified, an order of appellee, the Ohio Board of Nursing ("board"), that denied full approval and withdrew provisional approval of one of appellant's nursing programs. For the reasons that follow, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} Established in 2006 in Highland Heights, Ohio, appellant, is a private, for-profit school, offering two nursing education programs. One of the programs offered by appellant is a one-year practical nursing program that prepares students to become licensed practical nurses. The second program offered by appellant is a two-year associates degree in nursing ("ADN" or "RN" program) that prepares students to become registered nurses. The subject of the current appeal is appellant's ADN program.

{¶ 3} In 2006, the board granted conditional approval of appellant's ADN program pursuant to R.C. 4723.06. After discovering deficiencies in the ADN program in 2007, appellant and the board entered into a consent agreement in March 2008 ("consent agreement"), which provided for full approval of the ADN program, subject to terms and conditions that would apply for a minimum of three years. The following July, the board determined appellant violated the consent agreement, and this determination resulted in an addendum to the consent agreement. The addendum provided for appellant's acknowledgment of its failure to comply with the consent agreement and provided for additional terms and conditions with which appellant was to abide. The addendum also contained a "failure to comply" clause stating:

> The Board and ATS agrees [sic] that the Board shall send written notice of possible violations or breaches to ATS if it appears to the Board that ATS has violated or breached any terms or conditions of the March 2008 Consent Agreement or this Addendum. ATS shall have thirty (30) days from the mailing of the written notice to submit to the Board evidence demonstrating that a violation or breach has not occurred or has been cured. The Board, at its meeting following receipt of ATS's response, may automatically place ATS on provisional approval status if it find sufficient evidence that a violation or breach has occurred and not been cured. Following the automatic placement, the board shall notify ATS via certified mail of the specific nature of the charges and automatic placement on provisional approval status. Upon receipt of this notice, ATS may request a hearing regarding the charges.

{¶ 4} To ensure compliance with the consent agreement and addendum, as well as all applicable laws and rules, the board conducted an announced survey visit of appellant in September 2008. By letter to appellant issued in October, the board identified problems discovered during the survey visit. Appellant submitted a response;

however, the board found appellant's response insufficient. Therefore, on January 15, 2009, the board issued appellant a "Notice of Automatic Placement on Provisional Approval Status" and a notice of opportunity for hearing. Appellant requested a hearing, and said hearing was held on October 19, 2009. The hearing examiner issued a report and recommendation on November 9, 2009, finding appellant failed to comply with several terms of the consent agreement and addendum. After the board hearing on January 22, 2010, the board issued an adjudication order ("January 2010 order") that continued appellant's provisional approval status for a minimum of two years, retroactive to January 2009. The January 2010 order also provided for at least one survey visit to be conducted by October 15, 2010.

{¶ 5} The board conducted survey visits on May 5, September 20, and September 21, 2010. After the September survey visits, the board sent appellant a report identifying standards not being met by the ADN program. Appellant responded, and after a hearing in January 2011, the board issued appellant a notice of opportunity for hearing alleging appellant's failure to comply with the requirements of Ohio Adm.Code 4723-5 and the board's January 2010 order. The January 2011 notice informed appellant that the board proposed to withdraw its provisional approval of appellant's ADN program.

{¶ 6} Following a hearing on September 12-14, 2011, the hearing examiner issued a 45-page report and recommendation that included a summary of the evidence presented, findings of fact and conclusions of law. The hearing examiner concluded appellant failed to comply with the board's January 2010 order by failing to comply with Ohio Adm.Code 4723-5. Therefore, the hearing examiner recommended that the board withdraw its provisional approval of appellant's ADN program with a condition that appellant be permitted to reapply for conditional approval only after a stated period of time, "when [appellant] is able to demonstrate a plan for an RN program that meets all of the requirements of R.C. Chapter 4723 and OAC Chapter 4723-5." Report and Recommendation, at 44-45.

{¶ 7} By adjudication order issued on November 18, 2011, the board adopted the hearing examiner's findings of fact and conclusions of law. In accordance therewith, the board withdrew the provisional approval status of appellant's ADN program and denied full approval of said program. The board further ordered that appellant may apply for

conditional approval of its ADN program after a period of not less than two years from the effective date of the order. The board's order explained:

> The rationale for specifying a two-year period of time for re-application is as follows: The **PROGRAM** has been provided opportunities to correct the issues that resulted in the **PROGRAM's** failure to meet and maintain the minimum requirements established for registered nursing education programs and has demonstrated a lengthy, historic inability to comply with these minimum requirements. In addition, the **PROGRAM** places the public at risk by graduating students who do not obtain an education that meets the minimum standards established in the Nurse Practice Act and rules, including, for example, failing to provide students clinical experience in specified practice areas * * * and graduating students who had not obtained passing grades in clinical areas, as required by the **PROGRAM's** own progression policies * * *.

November 18, 2011 order, at 1-2.

{¶ 8} Pursuant to R.C. 119.12, appellant appealed the board's order to the Franklin County Court of Common Pleas. The trial court concluded the board's order denying full approval and withdrawing provisional approval of appellant's ADN program was supported by reliable, probative, and substantial evidence. However, the trial court also concluded the board did not have the authority to subject appellant to a two-year waiting period before appellant could re-apply for conditional approval of its ADN program. Therefore, the trial court removed the two-year waiting period and affirmed the board's order as modified.

II. ASSIGNMENTS OF ERROR

{¶ 9} This appeal followed, and appellant brings the following three assignments of error for our review:

> [I.] The decision of the Court of Common Pleas is not in accordance with law because it improperly relied on a flawed interpretation of Ohio Adm.Code 4723-5-13(F).
>
> [II.] The Court of Common Pleas abused its discretion because it determined that ATS failed to correct all of its cited deficiencies.

> [III.] The Court of Common Pleas abused its discretion by deciding the Board's Order was issued by an impartial tribunal because the seven Board members that participated in the vote did not represent a quorum.

{¶ 10} The board filed a cross-appeal and asserts a single assignment of error for our review:

> The court below concluded that the Ohio Board of Nursing has the power withdraw approval from a nursing school, but could not specify how long a school must wait before reapplying. Did the court err?

III. STANDARD OF REVIEW

{¶ 11} Under R.C. 119.12, a common pleas court, in reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110-11 (1980). The common pleas court's " 'review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court "must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Ohio Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207 (1st Dist.1981), quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 280 (1955). The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is "in accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471 (1993).

{¶ 12} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993). The appellate court is to determine only whether the common pleas court abused its discretion. *Id.*; *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983) (" 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable."). Absent an abuse of discretion, a

court of appeals may not substitute its judgment for that of an administrative agency or the common pleas court. *Pons* at 621. An appellate court, however, has plenary review of purely legal questions. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498, 2003-Ohio-418, ¶ 15 (10th Dist.).

IV. DISCUSSION

A. Appellant's First Assignment of Error

{¶ 13} In its first assignment of error, appellant contends the trial court erred in relying on the board's flawed interpretation of Ohio Adm.Code 4723-5-13(F). Specifically, the board found that three courses in appellant's ADN program, NUR 2031, NUR 2110, and NUR 2120, violated Ohio Adm.Code 4723-5-13 because in these courses, appellant failed to implement its curriculum as written and failed to provide clinical experiences across the life span.

{¶ 14} Ohio Adm.Code 4723-5-13 provides, in part:

> (A) The registered nursing education program curriculum shall include content that validates the student's acquired knowledge, skills and behaviors that are necessary to safely and effectively engage in the practice of registered nursing, as defined in division (B) of section 4723.01 of the Revised Code.
>
> * * *
>
> (F) The curriculum shall consist of course content in nursing art and science, the physical biological and technological sciences, and social and behavioral sciences. This content may be integrated, combined, or presented as separate courses as follows:
>
> (1) Nursing art and science applied in a variety of settings to individuals or groups across the life span, that include but are not limited to:
>
> * * *
>
> (8) Clinical and laboratory experiences that:
>
> (a) Meet the established course objectives or outcomes;
>
> (b) Provide a nursing student with the opportunity to practice cognitive, psychomotor, and affective skills in the

> performance of a variety of nursing functions with individuals or groups across the life span;
>
> (c) Provide a nursing student with the opportunity to practice technical skills including skills pertaining to intravenous therapy;
>
> (d) Are provided concurrently with the related theory instruction.

{¶ 15} Appellant asserts two primary arguments regarding why the board's interpretation of Ohio Adm.Code 4723-5-13(F) is flawed. First, appellant contends the rule's use of the word "may" unambiguously indicates subsection (F) does not mandate a clinical experience across each life span; therefore, there is no need to defer the board's interpretation. Secondly, appellant contends the word "and" used in subsection (F)(8) should be read as "or" because this section is meant to permit either clinical or laboratory experiences. In other words, appellant suggests this section allows for laboratory experiences, either in addition to or in lieu of clinical experiences. It is appellant's position that because Ohio Adm.Code 4723-5-13 is a remedial provision, it is entitled to such liberal construction.

{¶ 16} In *OPUS III-VII Corp. v. Ohio State Bd. of Pharmacy*, 109 Ohio App.3d 102 (10th Dist.1996), this court reviewed an administrative code provision governing the return and re-dispensing of medications by a pharmacy. At that time, the pharmacy board's rule provided that in order to be reused after having been dispensed to a person in an inpatient setting, there must be a system in place providing that the medication was (a) "single dose" and "unopened" or (b) "hermetic" and "unopened." Id. at 107. The pharmacy board received an inquiry from a pharmacy manager asking if unused medications dispensed by the pharmacy's unit-dose system could be returned and re-dispensed in accordance with said pharmacy board rule.

{¶ 17} The pharmacy board determined that once a medication was dispensed from the unit-dose system, it could be opened and restocked without showing any signs of having been opened. Therefore, the pharmacy board informed the pharmacy manager that the pharmacy's unit-dose system did not meet the requirements of the rule such that unused medications could be re-dispensed. In so concluding, the board determined

"unopened" as used in the rule could mean a pharmacist should be able to make a normal visual observation of a unit-dose product to determine if the container had been opened. The manufacture of the unit-dose system took exception to the board's conclusion, which ultimately resulted in an appeal to the common pleas court in accordance with RC 119.12. The trial court held that the board acted within it statutorily authorized power to interpret the rules and regulations it promulgated and affirmed the pharmacy board's decision.

{¶ 18} Much like appellant argues here, the manufacturer argued on appeal to this court that the trial court erred by deferring to the board's power to interpret the meaning of a term where such interpretation was inconsistent with the express language of the rule itself. In rejecting the manufacturer's argument, the *OPUS* court stated, "[t]his court must give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise in the particular subject area and to which the General Assembly has delegated the responsibility of implementing the legislative command." *Id*. at 112-13, citing *State ex rel. McLean v. Indus. Comm.*, 25 Ohio St.3d 90 (1986). "Furthermore, such deference is afforded to an administrative agency's interpretation of its own rules and regulations if such an interpretation is consistent with statutory law and the plain language of the rule itself." *Id*. at 113, citing *Jones Metal Prods. Co. v. Walker*, 29 Ohio St.2d 173, 181 (1972). Therefore, this court concluded the pharmacy board's interpretation was a "reasonable construction" of the administrative code rule and was not inconsistent with the express language of the rule.

{¶ 19} In the case before us, appellant contends the board erred in its interpretation of Ohio Adm.Code 4723-5-13 because the plain language of the rule does not require a clinical experience across each life span. To support this argument, appellant focuses on the phrase "this content *may* be integrated, combined, or presented as separate courses as follows" as used in subsection (F). (Emphasis added.) According to appellant, use of the word "may" indicates this is discretionary and not mandatory. In contrast, the board interpreted this provision as indicating that the subjects listed under subsection (F) must all be taught, but, that schools can choose whether this content will be integrated, combined or presented in separate courses. According to the board, use of the word "may" does not give school's discretion as to whether or not to provide the listed

content, but rather, gives schools discretion to teach the content as a separate class or in combination with another.

{¶ 20} Contrary to appellant's position, we do not find that Ohio Adm.Code 4723-5-13(F) *unambiguously* indicates the course content listed within said provision, i.e., clinical and laboratory experiences providing nursing students with an opportunity to practice skills across the life span, is discretionary. While that may be one interpretation of the provision, we find that the board's interpretation of Ohio Adm.Code 4723-5-13(F), to require clinical and laboratory experiences across the life span, to be a reasonable construction of the rule. The purpose of the board, composed of persons with the necessary knowledge and expertise in nursing, is, in part, to define the minimum curricula and standards for educational programs of schools of professional nursing. R.C. 4723.06. We cannot say the board's interpretation of the word "may" as used in Ohio Adm.Code 4723-5-13(F) to require clinical and laboratory experiences across the life span, is either unreasonable or inconsistent with the rule's plain language. *OPUS*.

{¶ 21} For similar reasons, we reject appellant's contention that clinical experiences across the life span are not required because the word "and" as used in subsection (F)(8) should be read as "or." Here, appellant contends this court should reject the board's literal interpretation of the code to require both clinical and laboratory experiences across the life span, and instead, interpret the word "and" as "or" in order to find that either clinical or laboratory experiences across the life span are sufficient.

{¶ 22} We reject appellant's contention for several reasons. First, it cannot be said that the board's literal reading of the rule is inconsistent with the express language of the rule. While there may be reasons advantageous to appellant for reading the word "and" as "or," our duty is to construe the statute as written. *State ex rel. Butler. Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Commrs.*, 124 Ohio St.3d 390, 2010-Ohio-169, ¶ 22. By the plain language of Ohio Adm.Code 4723-5-13(F)(8), both clinical and laboratory experiences are required. Because we cannot rewrite statutes in the guise of statutory interpretation, we decline to adopt appellant's overly-broad construction of Ohio Adm.Code 4723-5-13(F)(8). *Wightman v. Ohio Real Estate Comm.*, 195 Ohio App.3d 561, 572, 2011-Ohio-1816, ¶ 40 (10th Dist.), citing *Estate of Heintzelman v. Air Experts, Inc.*, 126 Ohio St.3d 138, 2010-Ohio-3264, ¶ 15 (" '[W]here the language of a statute is clear

and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom.' "); *Cleveland Elec. Illuminating Co. v. Cleveland*, 37 Ohio St.3d 50 (1988), paragraph three of the syllabus (holding that, when interpreting statutes, courts must "give effect to the words used, not [] delete words used or [] insert words not used").

{¶ 23} Secondly, to the extent appellant is arguing the board is interpreting the subject language, it cannot be said that the board's interpretation of Ohio Adm.Code 4723-5-13(F)(8) is unreasonable. Though appellant argues its alternative interpretation of the code is a "fair reading" of the same, that is not standard of review employed by this court when reviewing orders from an administrative agency. We remain mindful of the basic role of administrative law that an agency has discretion to promulgate and interpret its own rules, and this court will give an agency due deference for such determinations as long as its actions are reasonable in carrying out the statutory dictates of the legislature. *Frisch's Rests., Inc. v. Conrad*, 170 Ohio App.3d 578, 2007-Ohio-545, ¶ 19 (10th Dist.); *State ex rel. Graham v. Ohio Dept. of Edn.*, 10th Dist. No. 08AP-1104, 2009-Ohio-6899; *Ridgeway v. State Med. Bd.*, 10th Dist. No. 07AP-446, 2008-Ohio-1373; *OPUS*.

{¶ 24} Because we conclude the board's interpretation of Ohio Adm.Code 4723-5-13(F) is neither unreasonable nor inconsistent with the rule's express language, we overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶ 25} In its second assignment of error, appellant contends the trial court erred in determining that it failed to correct all of the deficiencies cited by the board. According to appellant, at the time of the adjudication hearing on November 18, 2011, it had corrected all noted deficiencies and was in compliance with the minimum standards set forth by the board. Therefore, it is appellant's position that as of November 18, 2011, the board could not withdraw its provisional approval of the ADN program. Additionally, appellant contends the trial court abused its discretion by failing to consider evidence presented at the adjudication hearing. In support, appellant directs us to Ohio Adm.Code 4723-5-04(B)(3), which provides:

> (B) The following procedures shall be followed by the board when a program does not meet and maintain the requirements of this chapter:
>
> * * *
>
> (3) If a program on provisional approval continues to fail to meet and maintain the requirements of this chapter at the end of the time period established for provisional approval, the board may propose to continue provisional approval for a period of time specified by the board or may propose to withdraw approval pursuant to an adjudication under Chapter 119. of the Revised Code. The adjudication may result in the continuance of provisional approval, withdrawal of approval, or granting of full approval.

{¶ 26} According to appellant, this provision provides that the board can only withdraw provisional approval of a program if it continues to fail to meet and maintain applicable requirements, thus contemplating the date of the adjudicatory hearing is the date to determine compliance. As noted by both the trial court and the board, though focusing on Ohio Adm.Code 4723-5-04(B)(3), appellant seemingly disregards the very following provision, Ohio Adm.Code 4723-5-04(B)(4), which provides:

> (4) If a program on provisional approval in accordance with this chapter demonstrates that an additional requirement is not being met and maintained, the board shall propose to withdraw approval pursuant to an adjudication under Chapter 119. of the Revised Code. The adjudication may result in the continuance of provisional approval, withdrawal of approval, or granting of full approval.

{¶ 27} The January 2011 notice issued by the board referenced the announced survey visits of May and September 2010 and the deficiencies associated therewith. The January 2011 notice also referenced both Ohio Adm.Code 4723-5-04(B)(3) and (4), indicating its ability and intention to take action under either section. Thus, in addition to alleging a failure to comply with the minimum curricula and standards for nursing educational programs, the board alleged a failure to comply with the terms of the January 2010 order. Upon a finding that the terms of the January 2010 order were not being complied with, the board was authorized to take the action it did here.

{¶ 28} Moreover, the record reflects the board did consider actions taken by appellant after the January 2011 notice was issued. The October 2011 report and recommendation of the hearing examiner discusses mitigation evidence, such as newly hired faculty and staff. Specifically, the hearing examiner mentioned the January 22, 2011 hiring of a new program administrator, new faculty that was hired in Spring 2011, and a consultant that was hired in June 2011. While finding "considerable improvements" had been achieved, the hearing examiner was concerned that despite having years of notice, appellant waited until just months before the hearing to make said improvements. Moreover, the hearing examiner stated:

> Because this is the second time ATS has come before the Board in a hearing, and because the evidence showed that deficiencies in the program continue to exist during the additional two-year provisional approval period that ATS was granted in the Board's January 2010 Order, I find that the Board has the authority to withdraw its approval from this program. However, if the Board finds that the mitigation evidence has shown that ATS is able to offer a high-quality program to its students in the immediate future, then it is the Board's prerogative to offer ATS an additional period of time in which it may remain on provisional approval.

{¶ 29} Thus, it does not appear that either the board or the trial court failed to consider evidence, but rather that appellant believes the evidence was not given proper weight. Although the trial court must necessarily weigh the evidence presented to the administrative agency and, to a limited extent, may re-evaluate the credibility of the evidence, it must give due deference to the administrative determination of conflicting testimony, including the resolution of credibility conflicts. *Crumpler v. State Bd. of Edn.*, 71 Ohio App.3d 526, 528 (10th Dist.1991), citing *Univ. of Cincinnati; Myers v. Columbus Developmental Ctr.*, 10th Dist. No. 88AP-497 (Sept. 13, 1988) ("[i]t is elementary that in reviewing an order pursuant to R.C. 119.12, the common pleas court should normally defer to the determination of the administrative agency as to the weight to be given the evidence and the credibility of the witnesses"); *Slorp v. Dept. of Adm. Servs.*, 10th Dist. No. 97APE08-1136 (Apr. 30, 1998), citing *Univ. of Cincinnati. See also Linden Med. Pharmacy v. Ohio State Bd. of Pharmacy*, 10th Dist. No. 02AP-1233, 2003-Ohio-6650, ¶ 13.

{¶ 30} Accordingly, we overrule appellant's second assignment of error.

C. Third Assignment of Error

{¶ 31} In its third assignment of error, appellant contends it was error for the trial court to affirm, as modified, the board's order because the order was issued by a tribunal that was not impartial.

{¶ 32} An administrative agency's determination is presumptively valid, and the burden is on the appellant to establish bias. *Serednesky v. Ohio State Bd. of Psychology*, 10th Dist. No. 05AP-633, 2006-Ohio-3146, ¶ 21, citing *Smith v. State Med. Bd.*, 10th Dist No. 00AP-1301 (July 19, 2001), citing *West Virginia v. Hazardous Waste Facility Approval Bd.*, 28 Ohio St.3d 83, 86 (1986). Hence, appellant has the burden to prove, beyond merely stating that bias and prejudice exist, that the members are " 'biased, partial or prejudiced to such a degree that his presence adversely affected the board's decision.' " *Serednesky*, quoting *West Virginia* at 86.

{¶ 33} Appellant contends two board members, Judith Church and Melissa Meyer, should have recused themselves from deliberations. Specifically, appellant contends that by virtue of her position as the board's supervisory member for disciplinary matters, Church had the authority to approve or reject settlement terms between the board and appellant, and Church was thereby privy to information shared by the parties during their negotiations.

{¶ 34} Fatal to appellant's claim is that not only is there no evidence that Church had any involvement with the parties' settlement negotiations, but also, there is no evidence that she shared any such information with other board members or was herself prejudiced thereby. Instead of providing evidence, appellant presupposes that because Church *may* have been privy to information contained in settlement negotiations, she conveyed such information to other board members and was consequently biased and partial. However, without a specific demonstration of bias or prejudice, appellant has failed to meet its burden to establish same. *Serednesky*.

{¶ 35} Appellant's argument with respect to Meyer fails for similar reasons. Here, appellant contends that because Meyer supervised the September 2010 survey visit, she was privy to information not provided to other board members. Again, the record lacks

evidence to support appellant's contention. Moreover, as found by the trial court, the survey report completed after the survey visit was issued to appellant and was admitted into evidence at the adjudication hearing. Because we conclude this record lacks evidence to support appellant's claims that two board members were biased, the remainder of appellant's arguments relating to the lack of a quorum had these two members not voted is rendered moot.

{¶ 36} Accordingly, we overrule appellant's third assignment of error.

D. Cross-Assignment of Error

{¶ 37} We now turn to the board's cross-appeal in which the board contends the trial court erred in finding the board had no authority to impose a waiting period of two years before appellant could re-apply for conditional approval of its ADN program.

{¶ 38} As previously discussed, the board withdrew provisional approval and denied full approval of appellant's ADN program. Additionally, the board ordered appellant was prohibited from re-applying for conditional provisional approval of its ADN program for a two-year period. The trial court concluded that while the board was statutorily authorized to deny full approval and withdraw provisional approval of the ADN program, the board was not so authorized to impose the two-year waiting period.

{¶ 39} On appeal, the board contends it has the authority to set a time frame before a program may re-apply for conditional approval. In support, the board relies on *Guanzon v. State Med. Bd.*, 123 Ohio App.3d 489 (10th Dist.1997) and *Roy v. State Med. Bd.*, 101 Ohio App.3d 352 (10th Dist.1995), two cases concerning the medical board's authority to permanently revoke a license to practice medicine. In *Roy*, the statute provided the medical board could "limit, revoke, or suspend" a license for reasons enumerated in the statute. Finding the physician violated applicable laws, the medical board in *Roy* voted to permanently revoke his license to practice medicine. On appeal, the physician argued the board had the authority only to issue a revocation of a license and did not have the authority to permanently revoke a license. This court disagreed. Reasoning the statutory framework suggested the term "revoke" included permanent revocation, this court held the medical board's authority to revoke a license included the authority to revoke it permanently. *Guanzon*, relying on *Roy*, held likewise.

{¶ 40} Based on *Guanzon* and *Roy*, appellant asserts the board had the authority to impose the two-year waiting period and the trial court erred in modifying the board's order. As it relates to the board's power regarding education programs, R.C. 4723.06(A) provides, in relevant part:

> (A) The board of nursing shall:
>
> * * *
>
> (6) Grant conditional approval, by a vote of a quorum of the board, to a new prelicensure nursing education program or a program that is being reestablished after having ceased to operate, if the program meets and maintains the minimum standards of the board established by rules adopted under section 4723.07 of the Revised Code. If the board does not grant conditional approval, it shall hold an adjudication under Chapter 119. of the Revised Code to consider conditional approval of the program. If the board grants conditional approval, at its first meeting after the first class has completed the program, the board shall determine whether to grant full approval to the program. If the board does not grant full approval or if it appears that the program has failed to meet and maintain standards established by rules adopted under section 4723.07 of the Revised Code, the board shall hold an adjudication under Chapter 119. of the Revised Code to consider the program. Based on results of the adjudication, the board may continue or withdraw conditional approval, or grant full approval.
>
> (7) Place on provisional approval, for a period of time specified by the board, a program that has ceased to meet and maintain the minimum standards of the board established by rules adopted under section 4723.07 of the Revised Code. At the end of the period, the board shall reconsider whether the program meets the standards and shall grant full approval if it does. If it does not, the board may withdraw approval, pursuant to an adjudication under Chapter 119. of the Revised Code.

{¶ 41} The board has only those powers explicitly delegated by statute and must operate within whatever limitations are contained within its enabling statutes. *Shell v. Ohio Veterinary Med. Licensing Bd.*, 105 Ohio St.3d 420, 2005-Ohio-2423, ¶ 32, citing *Johnson's Mkt., Inc. v. New Carlisle Dept. of Health*, 58 Ohio St.3d 28, 36 (1991); *Ohio*

Cent. Tel. Corp. v. Pub. Util. Comm., 166 Ohio St. 180, 182 (1957) (an administrative body may exercise only the powers and authority conferred by the General Assembly). Further, if the board imposes a sanction that is within its statutory authority, courts have no authority to reverse or modify it. *In re Vaughn v. State Med. Bd.*, 10th Dist. No. 95APE05-645 (Nov. 30, 1995), citing *Roy* at 683; *DeBlanco v. Ohio State Med. Bd.*, 78 Ohio App.3d 194, 202 (10th Dist.1992); *Sicking v. State Med. Bd.*, 62 Ohio App.3d 387, 395 (10th Dist.1991).

{¶ 42} As concluded by the trial court, R.C. 4723.06(A) provides that after the adjudication hearing, the board could have continued provisional approval, withdrawn provisional approval, or granted full approval of appellant's ADN program. The statute does not, however, provide the board with authority to establish a period of time during which appellant can be barred from re-applying for approval of its ADN program. Unlike *Guanzon* and *Roy* where the court concluded the medical board's authority to revoke a license necessarily included the authority to revoke the license permanently, the same cannot be said for statutory framework at issue here.

{¶ 43} The issue currently before this court is whether the board has the statutory authority to limit one's ability to reapply for approval of an education program after provisional approval has been withdrawn and full approval has been denied. Such authority is not currently provided for within the statute and such authority cannot be implied in this instance. Therefore, we conclude the trial court did not err in concluding the board did not have the authority to impose a two-year period in which appellant was prohibited from re-applying for approval of its ADN program and in modifying the board's order to remove the two-year waiting period.

{¶ 44} Accordingly, we overrule the board's cross-assignment of error.

V. CONCLUSION

{¶ 45} For the foregoing reasons, appellant's three assignments of error are overruled, the board's cross-assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

TYACK and FRENCH, JJ., concur.