STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Stephanie McNeal,

Appellant,

v. Case Nos. 2016-RED-03-0048
2016-REM-04-0062

Logan Acres Care Center, Logan County,

Appellee,

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellee's Orders are **DISAFFIRMED** on procedural grounds for non-compliance with R.C. 124.34 and O.A.C. 124-3-01.

Casey - Aye
Tillery - Aye
McGregor - Aye

Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, October 19, 2016.

Clerk

NOTE: *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE October 26, 2016. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2016-RED-03-0048, 0062

Transcript Costs: N/A Administrative Costs: $25.00

Total Deposit Required: * $25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: November 3, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Stephanie McNeal,	Case Nos. 2016-RED-03-0048 2016-REM-04-0062
Appellant,	
v.	August 31, 2016
Logan Acres Care Center, Logan County,	
Appellee.	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These matters arise from Appellant's Motion to Dissaffirm Appellee's Orders, Appellee's Reply, and Appellee's responses to this Board's Questionnaire issued July 28, 2016.

The instant records conclusively establish that Appellee's Orders reducing and removing Appellant are defective as a matter of law because they are not signed by the statutory appointing authority in accordance with O.A.C. 124-3-01. Accordingly, these Orders should be disaffirmed.

FINDINGS OF FACT

1. Appellee, Logan Acres Care Center ("LACC"), is a "*County Home*" organized under R.C. Chapter 5155.

2. The Board of County Commissioners ("BOCC") ***shall*** appoint a superintendent to administer the county home. R.C. 5155.03.

3. The superintendent is the Appointing Authority for purposes of R.C. Chapter 124. *Lawrence v. Hardin Hills Health Ctr.*, 3rd Dist. No. 6-12-13, 2013-Ohio-2048.

4. Lorraine Fischio is an employee of the private for profit corporation, Progressive Health Care Systems Inc. ("PHCS"). Her compensation is set by PHCS.

5. Fischio is not the superintendent within the meaning of R.C. 124.01 (D) and R.C. 5155.03.

6. Fischio signed Appellee's Orders reducing and then removing Appellant.

7. There is no supporting resolution attached to or counter signatures present on any of Appellee's orders.

CONCLUSIONS OF LAW

R.C. 124.34 orders may be affirmed only when the order is served bearing the original signature of the appointing authority. O.A.C 124-3-01. It is not disputed that Fischio signed the pertinent orders. Appellee's responses to this Board's questionnaire conclusively demonstrate that Fischio has not been appointed superintendent by the BOCC, and that she is not a public employee.

Appellee argues that it has expressly delegated authority to Fischio through its contract with PHCS. It relies on R.C. 5155.02 which allows a BOCC to enter into a contract to aid in the execution of its powers.

However, Appellee's broad reading of R.C. 5155.02 ignores the corollary mandate of R.C. 5155.03 to appoint a superintendent. It also ignores binding case law in *Hardin Hills supra. (establishing that the superintendent is the appointing authority for purposes of R.C. Chapter 124.)*

It is a well settled principle of statutory construction that Ohio courts will give effect to *all* the words in a statute enacted by the General Assembly wherever possible. *State v. Wilson* 77 (1997) Ohio St. 3d 334, 337-38 *citing Wachendorf v. Shaver* (1948) Ohio St. 231. Here, in order to comply, the BOCC must appoint a superintendent, must set the compensation of the superintendent, and the superintendent must sign any R.C. 124.34 orders.

Therefore, I respectfully **RECOMMEND** that Appellee's Orders be **DISAFFIRMED** on procedural grounds for non-compliance with R.C. 124.34 and O.A.C. 124-3-01. Nothing in this recommendation should be construed to limit Appellee's ability to file another Section R.C. 124.34 order on the same grounds, but signed by a duly appointed superintendent. (O.A.C. 124-3-01 (B))

James R. Sprague
Administrative Law Judge