

[Cite as *Oyortey v. State Med. Bd. of Ohio*, 2012-Ohio-6204.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Michele A. Oyortey, M.D., :
 :
 Appellant-Appellant, :
 :
 v. : No. 12AP-431
 : (C.P.C. No. 11CVF-015388)
 :
 State Medical Board of Ohio, : (REGULAR CALENDAR)
 :
 Appellee-Appellee. :

D E C I S I O N

Rendered on December 28, 2012

Lane, Alton & Horst LLC, and Stephen B. Yurik, for appellant.

Michael DeWine, Attorney General, Heidi Wagner Dorn and Katherine J. Bockbrader, for appellee.

APPEAL from the Franklin County Court of Common Pleas

PER CURIAM.

{¶ 1} Appellant, Michele A. Oyortey, M.D. ("Dr. Oyortey"), appeals the judgment of the Franklin County Court of Common Pleas, which affirmed the order of appellee, the State Medical Board of Ohio ("Board"), which found Dr. Oyortey in violation of R.C. 4731.22(B)(5), (12), and (14). For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} On May 11, 2011, the Board issued Dr. Oyortey a notice of opportunity for a hearing, alleging that Dr. Oyortey violated R.C. 4731.22(B)(5), (12), and (14) as a result of her completion of a Certificate of Recommendation ("recommendation") for

Christopher A. Rice, M.D., who was applying for a medical license in Ohio. R.C. 4731.22(B) states, in pertinent part, as follows:

The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

* * *

(5) Making a false, fraudulent, deceptive, or misleading statement * * * in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

* * *

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed[.]

* * *

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed[.]

{¶ 3} Dr. Oyortey met Dr. Rice in November 2008 through Debbie Little, her co-worker at the Nationwide Children's Hospital Close to Home Clinic in Whitehall, Ohio. Dr. Oyortey next encountered Dr. Rice at a holiday dinner for the Whitehall clinic staff, when Dr. Rice accompanied Ms. Little. Dr. Oyortey, who talked with Dr. Rice for approximately one hour during the party, learned that Dr. Rice had graduated from The Ohio State University College of Medicine, completed a residency in ophthalmology, and practiced medicine for many years in New York and Illinois. Dr. Rice told her that he had gone into medicine to help people, that he had volunteered with Doctors Without Borders in Thailand, and that he volunteered as a tutor for disadvantaged children through his church.

{¶ 4} Dr. Rice contacted Dr. Oyorthey in May 2009 and asked her to complete a recommendation for him, as part of his application for a license to practice medicine in Ohio. Dr. Rice told Dr. Oyorthey that, as part of his application, he needed recommendations from two physicians licensed in Ohio. Dr. Oyorthey asked to see the recommendation form before deciding whether to complete it. The recommendation form required the recommending physician to be fully licensed in the state where the recommendation was to be notarized, to have known the applicant for at least six months, and to not be a relative of the applicant. Dr. Oyorthey asked Dr. Rice if there was anything more she needed to know about him before deciding to recommend him; Dr. Rice said no.

{¶ 5} The format of the recommendation was fill-in-the-blank, with spaces for responses to four questions and a space for additional comments. The recommendation form states that the completing physician must answer all questions. In the recommendation, Dr. Oyorthey confirmed that she had personally known Dr. Rice for six months and "that [he] is of good moral character." The recommendation form, including Dr. Oyorthey's responses, states as follows:

I rate his/her medical knowledge and technique as: good

His/her relationship with patients is: excellent

I rate his/her ability to work well with peers and medical staff as: good

His/her command of the English language is: good

Additional comments: He will be an asset to our community.

When she submitted her recommendation, Dr. Oyorthey had not observed Dr. Rice's medical technique, had not witnessed Dr. Rice's interaction with patients, and had never worked with Dr. Rice professionally. Instead, Dr. Oyorthey based her answers on the fact that, like herself, Dr. Rice graduated from The Ohio State University College of Medicine, Dr. Rice's interaction with staff at the December 2009 holiday party, and her interactions with Dr. Rice and Ms. Little. Dr. Oyorthey based her opinion of Dr. Rice's good moral character on Dr. Rice's volunteer work.

{¶ 6} In August 2010, after the Board permanently denied Dr. Rice's application for a license, a Board investigator interviewed Dr. Oyortey about her recommendation. During that interview, Dr. Oyortey learned, for the first time, that Dr. Rice had had his medical licenses revoked in New York and Illinois, had been convicted of felony theft, and had settled two medical malpractice lawsuits against him. Dr. Rice admitted that he did not reveal this history to either Dr. Oyortey or Ms. Little because he was ashamed and because he was fully disclosing that information to the Board. Dr. Oyortey told the investigator that she would never have given Dr. Rice a recommendation had she known those facts.

{¶ 7} A hearing examiner heard this matter on September 12, 2011, and subsequently issued a report and recommendation, including findings of fact and conclusions of law, in which she concluded that Dr. Oyortey did not violate R.C. 4731.22(B)(5), (12) or (14). As relevant here, the hearing examiner concluded that Dr. Oyortey did not violate R.C. 4731.22(B)(5) because her recommendation was not intentionally false, fraudulent, deceptive or misleading. She further concluded that there was insufficient evidence to establish that Dr. Oyortey's conduct rose to the level of falsification, under R.C. 2921.13(A), so as to violate R.C. 4731.22(B)(12) or (14). Based upon her findings of fact and conclusions of law, the hearing examiner recommended that the Board dismiss its case against Dr. Oyortey in its entirety.

{¶ 8} The Board considered the hearing examiner's report and recommendation at its November 9, 2011 meeting, and minutes of that meeting are included in the administrative record. Several Board members agreed that Dr. Oyortey did not intend to mislead the Board, while one Board member advocated that Dr. Oyortey did make knowingly false statements. Board member Dalsukh A. Madia, M.D., who did not believe that Dr. Oyortey intended to mislead the Board, stated that dismissal of this case would indicate that Dr. Oyortey did nothing wrong, but that a finding of a violation with an order of "No Further Action" would indicate that the case was properly brought before the Board, but that the Board chose to take no action. Appendix to appellant's brief, exhibit D.

{¶ 9} The Board ultimately voted to adopt the hearing examiner's findings of fact, but to modify her conclusions of law. As its rationale for amending the conclusions of law, the Board's order states: "When Dr. Oyortey facilitated another physician's application by submitting a notarized recommendation form in which she made statements as to the applicant's competency and relationships with peers, patients, and medical staff, she knew she did not have knowledge of the applicant's competency and relationships." The Board's amended conclusions of law state as follows:

1. Dr. Oyortey's acts, conduct, and/or omissions, as set forth in Findings of Fact 1 through 10, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement * * * in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in R.C. 4731[.]22(B)(5).

2. There is sufficient evidence to establish that Dr. Oyortey's acts, conduct, and/or omissions, as set forth in Findings of Fact 1 through 10, as well [as] Conclusion of Law 1[,] constitute[] "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as set forth in R.C. 4731.22(B)(12), to wit: Falsification, as set forth in R.C. 2921.13.

The Board, however, found insufficient evidence to establish a violation of R.C. 4731.22(B)(14). The Board amended the hearing examiner's proposed order to read that "NO FURTHER ACTION shall be taken in the matter of Michele Armande Oyortey, M.D." Thus, the Board did not take any disciplinary action against Dr. Oyortey.

{¶ 10} Dr. Oyortey appealed the Board's order to the Franklin County Court of Common Pleas, pursuant to R.C. 119.12, and the trial court affirmed the Board's order. Dr. Oyortey has now filed a timely notice of appeal to this court.

II. ASSIGNMENTS OF ERROR

{¶ 11} Appellant asserts the following assignments of error:

[I.] The trial court erred in affirming the order of the [Board] because the Board's conclusion of law that Dr. Oyortey violated R.C. §4731.22(B)(5) was not supported by reliable, probative and substantial evidence and was not in accordance with law.

[II.] The trial court erred in affirming the order of the Board because the Board's conclusion of law that Dr. Oyortey violated R.C. §4731.22(B)(12) was not supported by reliable, probative and substantial evidence and was not in accordance with law.

III. DISCUSSION

{¶ 12} In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. The Supreme Court of Ohio has defined reliable, probative, and substantial evidence as follows:

- (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

(Footnotes omitted.) *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992). In applying this standard, the trial court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980).

{¶ 13} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707 (1992). In reviewing the court of common pleas' determination that the Board's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Id.*, citing *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261 (1988). The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). On the question whether the Board's order was in accordance with the law, however, this

court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

A. First Assignment of Error: R.C. 4731.22(B)(5)

{¶ 14} By her first assignment of error, Dr. Oyortey claims that the trial court abused its discretion by affirming the Board's determination that her conduct violated R.C. 4731.22(B)(5). Dr. Oyortey argues that she did not violate that section because she was not attempting to secure a certificate to practice medicine, because her recommendation did not meet the statutory definition of a "false, fraudulent, deceptive, or misleading statement[,]" and because there was no evidence that her responses in the recommendation were intentionally false, fraudulent, deceptive or misleading.

{¶ 15} Dr. Oyortey initially argues that she could not have violated R.C. 4731.22(B)(5) because, in completing the recommendation, she was not attempting to secure a certificate to practice medicine. Dr. Oyortey argues that the Board may take disciplinary action against an individual for making a false, fraudulent, deceptive or misleading statement "in securing or attempting to secure any certificate to practice * * * issued by the [B]oard" only where the applicant personally makes a false, fraudulent, deceptive or misleading statement. Because she was not attempting to secure a certificate to practice for herself, Dr. Oyortey argues that the Board lacks authority to take action against her under R.C. 4731.22(B)(5).

{¶ 16} The Board expressly concluded that Dr. Oyortey's responses were made in securing or attempting to secure a certificate to practice. At the Board's November 9, 2011 meeting, Board member Anita M. Steinbergh, D.O., stated that Dr. Oyortey wrote the recommendation to help secure a license for Dr. Rice. The trial court similarly stated, "it is clear that [Dr. Oyortey] was attempting to secure a certificate to practice medicine in Ohio for Dr. Rice by providing him with a recommendation. R.C. 4731.22 refers to *any certificate to practice*, and does not contain language that limits the 'securing' or 'attempting to secure' to just the applicant's submission." (Emphasis sic.)

{¶ 17} In essence, Dr. Oyortey contests the Board's interpretation of R.C. 4731.22(B)(5). "It is a fundamental tenet of administrative law that an agency's interpretation of a statute that it has the duty to enforce will not be overturned unless

the interpretation is unreasonable." *State ex rel. Clark v. Great Lakes Constr. Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802, ¶ 10. A trial court must defer to an administrative agency's interpretation of a statute it must administer so long as the interpretation is reasonable and consistent with the underlying legislative intent. *Schroeder v. State Bd. of Registration for Professional Engineers & Surveyors*, 10th Dist. No. 04AP-338, 2004-Ohio-5793, ¶ 12. *See also Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 17-18 (2000), citing *Collinsworth v. W. Elec. Co.*, 63 Ohio St.3d 268, 272 (1992) (courts should afford due deference to "statutory interpretations by an agency that has accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility").

{¶ 18} As the trial court aptly noted, nothing in R.C. 4731.22(B)(5) expressly limits the requirement of a statement "in securing or attempting to secure" a license or certificate to a statement by the applicant. Rather, the statute broadly refers to an attempt to secure "*any* certificate to practice," and the evidence supports the determination that Dr. Oyortey's recommendation was a statement attempting to secure a license for Dr. Rice. (Emphasis added.) We do not find the Board's interpretation of R.C. 4731.22(B)(5), to cover a physician offering a recommendation to an applicant for licensure, unreasonable. While the Board has not identified any other case involving these circumstances, the absence of other cases does not demonstrate either that the Board's interpretation of the statute was unreasonable or that its order was not in accordance with applicable law. Accordingly, we conclude that the trial court appropriately deferred to the Board's interpretation of R.C. 4731.22(B)(5).

{¶ 19} Dr. Oyortey next argues that the record does not demonstrate that her responses on the recommendation form satisfy the statutory definition of a "false, fraudulent, deceptive, or misleading statement." R.C. 4731.22(B)(5) includes the following definition:

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications

that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

{¶ 20} Although Dr. Oyortey claims that the trial court failed to conduct any analysis of whether her conduct met the statutory definition, the trial court specifically cited R.C. 4731.22(B)(5) and held that her conduct "meet[s] the definition of false, fraudulent, deceptive or misleading[.]" We therefore reject Dr. Oyortey's argument that the trial court failed to analyze whether her conduct satisfied the statutory definition.

{¶ 21} With respect to whether Dr. Oyortey's recommendation satisfies the statutory definition, the court explained that, by completing the recommendation form and having it notarized, Dr. Oyortey conveyed to the Board that she possessed the requisite knowledge to complete the form. We agree. Dr. Oyortey's attestations to Dr. Rice's "excellent" relationship with his patients and his "good" medical knowledge and technique are, at least, misleading, given her lack of personal knowledge. By completing the recommendation and distinguishing between Dr. Rice's medical knowledge and technique, relationships with patients, and relationships with peers and medical staff, Dr. Oyortey conveyed to the Board that she had sufficient knowledge to make those distinctions, to assess Dr. Rice's suitability for a license to practice medicine in Ohio, and to vouch for his moral character. Although Dr. Oyortey correctly notes that the recommendation form does not expressly state that a physician must have a professional working relationship with the applicant, by requiring a physician to answer all questions, the recommendation form implicitly requires the physician to possess the knowledge required to do so. Neither Dr. Oyortey's statement that she had known Dr. Rice personally for only six months nor the fact that Dr. Oyortey and Dr. Rice practice in different specialties excuses Dr. Oyortey from the consequences of voluntarily offering her assessments regarding subjects upon which she had no knowledge.

{¶ 22} Dr. Oyortey undisputedly lacked knowledge of Dr. Rice's prior felony conviction, his disciplinary problems in Illinois and New York, and his malpractice settlements, as Dr. Rice intentionally hid those facts from Dr. Oyortey and Ms. Little. The hearing examiner's findings of fact, adopted by the Board, reflect Dr. Oyortey's testimony that she was unaware of Dr. Rice's "prior transgressions[.]" and no Board

member suggested that Dr. Oyorley was aware of those transgressions when she completed the recommendation. Neither the Board nor the trial court, however, relied on Dr. Oyorley's lack of knowledge about Dr. Rice's prior transgressions to find a "false, fraudulent, deceptive, or misleading statement."

{¶ 23} Both the Board and the trial court based their conclusion that Dr. Oyorley violated R.C. 4731.22(B)(5) upon Dr. Oyorley's assessment of Dr. Rice without the necessary knowledge to make such an assessment. The Board focused on Dr. Oyorley's attestation to the accuracy of information she did not know to be true, and its order states that Dr. Oyorley knowingly made statements regarding subjects of which she had no knowledge. The Board adopted the hearing examiner's finding that Dr. Oyorley had not witnessed Dr. Rice's medical technique, had not witnessed Dr. Rice interact with patients, and had never worked with Dr. Rice professionally. Multiple Board members stated that Dr. Oyorley should have investigated before recommending Dr. Rice and that she exercised poor judgment. Despite her disclosure that she had only known Dr. Rice for six months and the Board's knowledge (or ability to obtain knowledge) that Dr. Oyorley and Dr. Rice practiced in different specialty areas and in different states, the record contains evidence that Dr. Oyorley's recommendation was likely to cause an ordinarily prudent Board member to misunderstand or be deceived. Accordingly, we conclude that the trial court did not abuse its discretion by determining that reliable, probative, and substantial evidence supports the Board's finding that Dr. Oyorley's recommendation was at least deceptive or misleading.

{¶ 24} Dr. Oyorley's final argument under her first assignment of error is that the trial court abused its discretion because there is no evidence that her responses were *intentionally* false, fraudulent, deceptive or misleading. In *Rajan v. State Med. Bd. of Ohio*, 118 Ohio App.3d 187 (10th Dist.1997), this court held that it was erroneous to conclude that an appellant violated R.C. 4731.22(B)(5) where there was no evidence that the appellant intended to deceive or to misrepresent the facts. Nevertheless, in lieu of direct evidence of intent, the Board may infer appellant's intent from the surrounding circumstances. *Hayes v. State Med. Bd. of Ohio*, 138 Ohio App.3d 762, 770 (10th Dist.2000), citing *Krain v. State Med. Bd. of Ohio*, 10th Dist. No. 97APE08-981 (Oct. 29, 1998).

{¶ 25} *Krain* involved claims against a licensee for making false statements on his applications for renewal of his medical license. This court held that the evidence supported the Board's finding that the applicant provided false information, with the intent to deceive or mislead the Board, where the applicant failed to disclose a prior conviction and disciplinary action in response to unambiguous questions requiring him to do so. Similarly, in *Applegate v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-78, 2007-Ohio-6384, this court held that the trial court did not abuse its discretion in finding that the appellant intended to mislead the Board when, on his application for license renewal, he did not disclose that he had been a defendant in a malpractice action in response to a clear, unambiguous question that sought to ascertain that information. Dr. Oyortey argues that neither the Board nor the trial court was entitled to infer intent here because the allegedly deceptive or misleading statement was not about Dr. Oyortey herself, but about another physician.

{¶ 26} While Dr. Oyortey attempts to distinguish cases in which a physician misrepresents or falsifies information about the physician him or herself, that is essentially what Dr. Oyortey did in this case. The misleading nature of Dr. Oyortey's recommendation did not stem from the substance of her responses, but arose from her implication that she had sufficient knowledge to answer the questions asked of her. In the same way that an applicant for a medical license would have knowledge of his or her own previous legal troubles or disciplinary actions, it is reasonable to infer Dr. Oyortey's awareness of the limits of her knowledge regarding Dr. Rice. Dr. Oyortey initially hesitated when asked to complete the recommendation on behalf of Dr. Rice. Before agreeing to do so, she asked Dr. Rice for a copy of the recommendation form to review. She also asked Dr. Rice if there was anything else she needed to know before completing the recommendation form. Dr. Oyortey admitted, and the Board adopted the hearing examiner's findings, that she had not witnessed Dr. Rice's medical technique, had not witnessed Dr. Rice interact with patients, and had never worked with Dr. Rice professionally. Nevertheless, she purported to assess Dr. Rice's medical knowledge and technique, relationship with patients, and relationships with peers and medical staff.

{¶ 27} Dr. Oyortey was not required to complete the recommendation on behalf of Dr. Rice, but voluntarily agreed to do so, despite her lack of first-hand knowledge of the factors she was required to assess. Dr. Oyortey's disclosure that she had known Dr. Rice for only six months does not vindicate her decision to complete the recommendation without the requisite knowledge. The Board was entitled to presume that an eligible physician completing the form possessed the requisite knowledge, no matter the length of the relationship between the applicant and the recommending physician. By separately assessing and distinguishing between Dr. Rice's medical knowledge and technique, relationships with patients, and relationships with peers and medical staff, Dr. Oyortey misleadingly suggested to the Board that she possessed sufficient knowledge to offer the recommendation she was submitting. Upon review, we conclude that the hearing examiner's findings of fact, adopted by the Board, and the evidence presented to the Board include specific facts to support the conclusion that Dr. Oyortey intentionally misrepresented her knowledge of Dr. Rice's medical abilities to the Board in a manner that, in reasonable probability, would cause an ordinarily prudent Board member to misunderstand or be deceived. Therefore, we agree with the trial court that the record contains reliable, probative, and substantial evidence to support a finding that Dr. Oyortey's recommendation of Dr. Rice constituted a "false, fraudulent, deceptive, or misleading statement," as defined in R.C. 4731.22(B)(5). Accordingly, we overrule Dr. Oyortey's first assignment of error.

B. Second Assignment of Error: R.C. 4731.22(B)(12)

{¶ 28} By her second assignment of error, Dr. Oyortey contends that the trial court abused its discretion by affirming the Board's order that she violated R.C. 4731.22(B)(12), which authorizes the Board to take action against a licensee based on "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state[.]" The Board based its conclusion that Dr. Oyortey violated R.C. 4731.22(B)(12) on its determination that her conduct amounted to falsification, as proscribed in R.C. 2921.13(A). In support of her second assignment of error, Dr. Oyortey contends there was no evidence that she was acting "in the course of practice" when she completed and submitted the recommendation. She also contends that the evidence does not satisfy

the requirements of falsification under R.C. 2921.13(A). We will address Dr. Oyortey's two contentions, in turn.

{¶ 29} A physician's course of practice is not limited to consulting with or treating patients. For example, a physician's completion of medical records and billing are within the course of practice. See *Higginbotham v. Perez*, 10th Dist. No. 93APE12-1711 (Sept. 6, 1994); *Roy v. Ohio State Med. Bd.*, 80 Ohio App.3d 675, 682 (10th Dist.1992). Dr. Oyortey, however, maintains that completion of a recommendation, unlike those other acts, is not part of her course of practice. The trial court did not expressly address this issue but, in affirming the Board's finding of a violation of R.C. 4731.22(B)(12), it effectively concluded that the Board could have found that Dr. Oyortey was acting in the course of practice when she completed and submitted her recommendation of Dr. Rice.

{¶ 30} The Board does not dispute that it requires physicians applying for licensure in Ohio to obtain recommendations from fully licensed physicians, and the recommendation form expressly states that it must be completed by a fully licensed physician. Thus, only a licensed physician was eligible to complete the recommendation form for Dr. Rice. There appears to be no Ohio case law addressing whether the completion of a recommendation for an applicant for an Ohio medical license constitutes an act in the course of a physician's practice, but the Board is, nevertheless, entitled to interpret its own statutes. See *Clark* at ¶ 10. In doing so, the Board determined that Dr. Oyortey's course of practice encompassed her completion of the recommendation that she submitted to the Board. Because we discern no conflict between the Board's interpretation of the statute and the plain statutory language, and because we find the Board's interpretation reasonable, we cannot conclude that the trial court erred by deferring to the Board's interpretation.

{¶ 31} Dr. Oyortey also argues that the record contained no evidence from which a fact finder could have concluded that she committed falsification. R.C. 2921.13(A), which defines the offense of falsification, provides, in pertinent part, as follows:

No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

* * *

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.

To establish the elements of falsification, it must be demonstrated that the accused, under one of the situations identified in the statute, *knowingly* made a *false* statement or *knowingly* swore or affirmed the truth of a *false* statement previously made. *State ex rel. Nick Strimbu, Inc. v. Indus. Comm.*, 10th Dist. No. 03AP-71, 2004-Ohio-2991, ¶ 38. Because Dr. Oyortey affirmed her recommendation before a notary public, the only question is whether she knowingly made or affirmed the truth of a false statement.

{¶ 32} The trial court found that the evidence in the administrative record supported the Board's conclusion that Dr. Oyortey's conduct satisfied the statutory requirements. Dr. Oyortey, on the other hand, maintains that the trial court abused its discretion because the record lacked evidence that she knowingly made or affirmed a false statement.

{¶ 33} With respect to this issue, the trial court stated as follows:

The Board properly found that [Dr. Oyortey] made false, fraudulent, misleading and deceptive statements in her recommendation of Rice since she lacked knowledge of his ability to practice medicine, his moral character, or his interactions with patients, peers or staff. She affirmed, through a notary, that her recommendation of Rice was true and accurate even though she was recommending him for an Ohio medical license after only meeting him briefly on three prior occasions. Thus, her recommendation for Rice constituted falsification in violation of R.C. 4731.22(B)(12).

{¶ 34} We agree with the trial court and discern no abuse of discretion in its decision affirming the Board's order that Dr. Oyortey's conduct would constitute falsification. Dr. Oyortey made affirmations, though a notary, with respect to Dr. Rice's medical knowledge and technique, relationships with patients, and relationships with peers and medical staff. In doing so, Dr. Oyortey affirmed that she had sufficient knowledge to assess those subjects and to make a recommendation on Dr. Rice's behalf.

Dr. Oyortey, however, had met Dr. Rice only three times before and had no personal knowledge of his medical abilities. It was not unreasonable, arbitrary or unconscionable for the trial court to affirm the Board's conclusion that Dr. Oyortey knowingly made a false statement and that her conduct, therefore, constituted the misdemeanor offense of falsification under R.C. 2921.13(A). Accordingly, we overrule Dr. Oyortey's second assignment of error.

IV. CONCLUSION

{¶ 35} Having overruled Dr. Oyortey's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and SADLER, JJ., concur.
FRENCH, J., concurs in part and dissents in part.

FRENCH, J., concurring in part and dissenting in part.

{¶ 36} Although I agree with the majority's resolution of Dr. Oyortey's first assignment of error, I respectfully dissent from the resolution of Dr. Oyortey's second assignment of error.

{¶ 37} Under Dr. Oyortey's second assignment of error, I agree that the trial court properly deferred to the Board's interpretation of R.C. 4731.22(B)(12) regarding whether Dr. Oyortey was acting in the course of her practice when she completed and submitted her recommendation of Dr. Rice. I disagree, however, with the majority's determination that the record contained evidence supporting the Board's conclusion that Dr. Oyortey's conduct satisfied the statutory requirements of falsification, under R.C. 2921.13(A).

{¶ 38} Unlike a violation of R.C. 4731.22(B)(5), which may be premised on a "false, fraudulent, deceptive, *or* misleading statement," a violation of R.C. 2921.13(A) requires a "false statement." (Emphasis added.) As used in R.C. 2921.13, "statement" means an assertion of fact. *State v. Harmon*, 7th Dist. No. 95 C.A. 184 (Feb. 11, 2000); *State v. Coyne*, 69 Ohio App.2d 63, 64 (1st Dist.1980). Even assuming that Dr. Oyortey's recommendation qualified as a false statement, as opposed to an opinion, I discern no evidence upon which a trier-of-fact could conclude that Dr. Oyortey knew of its falsity.

{¶ 39} The fact that Dr. Oyortey voluntarily and intentionally chose to complete the recommendation and, in all probability, intended that the Board would rely on it, shines no light on the question of whether Dr. Oyortey knew that anything contained in her recommendation was false. The Board goes to great lengths to argue that Dr. Oyortey's recommendation was false because it was not supported by the facts regarding Dr. Rice's past. It is undisputed, however, that Dr. Oyortey had no knowledge of Dr. Rice's legal troubles or disciplinary actions, as Dr. Rice hid those facts from her. While Dr. Oyortey's knowing completion of the recommendation, with insufficient knowledge of Dr. Rice, may bring her representations within the scope of R.C. 4731.22(B)(5), as a statement that, in reasonable probability, will cause an ordinarily prudent Board member to misunderstand or be deceived, it does not rise to the level of a knowingly false statement under R.C. 2921.13(A). As the hearing examiner explained, "Dr. Oyortey's bad judgment is not tantamount to * * * making a knowingly false statement." Despite Dr. Oyortey's insufficient knowledge of Dr. Rice's medical practice and interactions with patients, peers or staff, the record contains no evidence that Dr. Oyortey knew that the recommendation she was giving was, in fact, false. Accordingly, I would conclude that the record did not contain reliable, probative, and substantial evidence from which to conclude that Dr. Oyortey's conduct constituted the misdemeanor offense of falsification and that, by affirming the Board's order in that regard, the trial court abused its discretion. Because the majority has determined otherwise, I dissent with respect to the second assignment of error.
