IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., BOTANIC TONICS, LLC 13105 E 61st St, Suite A Broken Arrow, OK 74012, Relator, vs. OHIO BOARD OF PHARMACY 77 S. High Street, Suite 1702 Columbus, OH 43215, Respondent.	)	Case No. _____ ORIGINAL ACTION IN MANDAMUS

COMPLAINT FOR MANDAMUS RELIEF

Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
8000 Walton Parkway, Suite 260
New Albany, OH 43054
614.365.9900
614.365.7900 (facsimile)
little@litohio.com
hogan@litohio.com

Attorneys for Relator
Botanic Tonics, LLC

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., BOTANIC TONICS, LLC 13105 E 61st St, Suite A Broken Arrow, OK 74012, Relator, vs. OHIO BOARD OF PHARMACY 77 S. High Street, Suite 1702 Columbus, OH 43215, Respondent.	)	Case No. _____ ORIGINAL ACTION IN MANDAMUS

COMPLAINT FOR MANDAMUS RELIEF

Relator Botanic Tonics, LLC ("BT"), for its complaint against Respondent the Ohio Board of Pharmacy ("BOP"), avers as follows:

1. This is an original action in mandamus brought under the Ohio Public Records Act, Ohio Revised Code Section 149.43, to compel the BOP to (a) produce public records and do so within a reasonable period of time; (b) timely make available for inspection public records; (c) pay statutory damages; and (d) pay BT's attorney fees.

A. The Parties and the Court's Jurisdiction.

2. BT is an Oklahoma-based manufacturer of dietary supplements made with natural, pure-leaf vegetative kratom in its dried and powdered form infused with water and with other legal dietary ingredients ("Natural-Leaf Kratom Dietary Supplements"). BT's Natural-Leaf Kratom Dietary Supplements are distributed in Ohio and sold by more than 1,600 retailers in Ohio. To its knowledge, BT is the only manufacturer of a liquid kratom product made with natural, ground up kratom leaves in their vegetative form, as opposed to concentrated kratom extracts.

3. The BOP is an Ohio state agency; a "public office" as that term is defined under Section 149.011(A) of the Ohio Revised Code; and has custody of (and has kept) the records which are the subject of this action.

4. Jurisdiction is proper in this Court pursuant to Article IV, § 2 of the Ohio Constitution and Rule X of the Rules of Practice of the Ohio Supreme Court.

B. <u>The Relevant Provisions of the Public Records Act.</u>

5. Under Ohio Revised Code Section 149.43(A)(1), "'public record' means records kept by any public office, including, but not limited to, state . . . units."

6. Ohio Revised Code Section 149.011(G) defines "records" to include "any document, device, or item, regardless of physical form or characteristic, including electronic records, . . . created or received by or coming under the jurisdiction of any public office . . . which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

7. Ohio Revised Code Section 149.43(B)(2) provides that "[t]o facilitate broader access to public records, a public office . . . shall organize and maintain public records in a manner that they can be made available for inspection."

8. Under Ohio Revised Code Section 149.43(B)(1), "all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Additionally, "upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time."

9. Under Ohio Revised Code Section 149.43(B)(3), "[i]f a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public

record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. . . ."

10. The records at issue are kept by Respondent and evidence its organization, functions, policies, positions, procedures, and/or operations.

C. Factual Background

1. Centuries Of Natural Kratom Use, And Scientific Studies, Confirm Its Safety.

11. Kratom (Mitragyna Speciosa) is an evergreen tree native to Southeast Asia.

12. People have used kratom in various ways for hundreds of years, resulting in a long history of proven safe, traditional use. All of those uses involve ingestion.

13. Chewing the leaves of kratom, drinking teas, infusions and water-based decoctions prepared from kratom leaves or consuming dried/powdered leaves have been practiced for centuries, especially in Thailand, Malaysia, Indonesia and Papua New Guinea.

14. Since the mid-1970's, natural kratom leaf products have gained popularity as foods or dietary supplements in the United States and other western countries. Users of these natural products, which can incorporate dried or powdered forms of natural kratom leaves, often claim the same benefits, among others, as traditional kratom users have reported experiencing for centuries: improved energy and mood without psychoactive effects.

15. Some of the natural, dried leaf kratom-containing products sold in the United States include natural leaf kratom supplements (the "Natural-Leaf Kratom Dietary Supplements") marketed as dietary supplements. Those tonics, in pertinent part, contain kratom in only its vegetative natural form: finely divided (comminuted)/powdered kratom leaves infused with water that have been dried and shipped from the parts of the world where the tree is indigenous.

16. Consumed responsibly in its natural leaf or dried/powdered leaf form that limits the concentration of key bioactive compounds, kratom has proven to be safe and devoid of any significant or unreasonable risk of illness or injury. On top of centuries of experience with its safe and responsible use in other countries, scientific studies have found no evidence that the daily ingestion of even moderate amounts of natural kratom in pure or dried/powdered leaf form has either short-term or long-term negative health consequences to the consumer.

17. The principal, active ingredient in natural kratom is an alkaloid compound known as mitragynine. In its natural form, and in the amounts present in the Natural-Leaf Kratom Dietary Supplements (20 mg per daily dose, with a maximum recommendation of two doses per day), mitragynine has proven and been scientifically shown to be safe for human consumption, with atypical minimal (and inconsequential) risk of and/or incidences of negative health consequences.

18. Although pure mitragynine is the alkaloid compound in natural kratom (typically representing around one-half or two-thirds of the total alkaloid content), the natural leaf typically also contains trace—although pharmacologically insignificant—amounts of 7-hydroxymitragynine (also known as 7-OH). These trace levels are so low as to have no impact on the already minimal risk profile of natural kratom leaf products.

2. In Contrast To The Natural-Leaf Kratom Dietary Supplements Manufactured And Sold By Plaintiffs, Some Companies Have Manufactured And Marketed Dangerous Synthetic And/Or Concentrated Products Containing Large Amounts Of 7-OH That Present A Much Different Risk Profile For Consumers.

19. In contrast to natural, leaf kratom products, including the Natural-Leaf Kratom Dietary Supplements manufactured by BT, some manufacturers and distributors have begun producing and offering non-natural products in the form of synthetic mitragynine concentrates or

isolates that deliver the mitragynine at much higher levels than those associated with traditional use and/or concentrated or synthetic 7-OH (the "Enhanced 7-OH Products").

20. Given that the amounts of 7-OH in these types of products are far in excess of the trace levels found in traditional or natural kratom leaf products, such products may pose a significant health risk given 7-OH at higher concentrations acts pharmacologically as a potent opioid (specifically, a μ-opioid agonist). Products containing isolated or concentrated mitragynine also give rise to substantial health concerns because mitragynine is metabolized in the human liver to 7-OH (the low levels of mitragynine in the Natural-Leaf Kratom Dietary Supplements are insufficient to be of toxicological concern).

21. With the levels found in synthetic or concentrated products, exposure to 7-OH has, thus, been found to have opiate-like effects and to present a heightened risk for psychological and/or physiological dependency (addiction).

22. Thus, to the extent public health concerns exist as to the sale of kratom-derived products, those concerns are driven by and arise from the problematic Enhanced 7-OH Products and, to a lesser extent, from the products based on concentrated or isolated mitragynine (that give rise to toxicologically significant exposure to 7-OH following conversion by the liver); **not** by natural kratom leaf products, including the Natural-Leaf Kratom Dietary Supplements, which deliver an alkaloid profile that is in line with products used traditionally in the Southeast Asian region for centuries.

D. The BOP's Initial, Botched Effort To Schedule Enhanced 7-OH Products Via An Improper "Emergency" Rule.

23. In or about July 2025, the federal Food and Drug Administration ("FDA") took steps to alert the public and medical professionals to the potential dangers of and health risks

associated with Enhanced 7-OH Products. See https://www.fda.gov/news-events/press-announcements/fda-takes-steps-restrict-7-oh-opioid-products-threatening-american-consumers.

24. The FDA noted that it was "specifically targeting 7-OH, a concentrated byproduct of the kratom plant; it is not focused on natural kratom leaf products." Id.

25. In an Opinion Editorial published in the New York Post on or about July 29, 2025, former FDA Commissioner Dr. Marty Makary stated: "To be clear, the kratom plant leaf, which contains trace amounts of 7-OH and has been consumed for centuries, is not our focus at the FDA. Rather, we are seeking to remove a dangerous synthetic opioid from retail shelves nationwide." See https://nypost.com/2025/07/29/opinion/beware-synthetic-kratom-7-oh-powers-a-new-opioid-crisis/.

26. Consistent with this federal guidance, the Ohio General Assembly continues to consider, at the committee level, legislation that would regulate natural kratom leaf products, while banning synthetic forms of 7-OH. See https://legiscan.com/OH/drafts/HB587/2025.

27. Other states have taken steps to do just that. Florida's Attorney General, for instance, issued an emergency rule in August 2025 that adds to Schedule I (in that state) products containing 7-OH above 400 parts per million on a dry-weight basis—a concentration far higher than that found in natural leaf kratom (including in the Natural-Leaf Kratom Dietary Supplements). See https://www.myfloridalegal.com/sites/default/files/2025-09/2er25-2.pdf. While Florida regulates the sale of natural kratom leaf products, it has drawn a bright line between them and Enhanced 7-OH products, which are banned by the state's emergency rule. Id.

28. Among other things, the BOP is statutorily charged with adopting and updating rules "establishing schedule I, schedule II, schedule III, schedule IV, and schedule V [drugs in

Ohio] incorporating the five schedules of controlled substances under the federal drug abuse control laws." See R.C. 3719.41(A) & (B).

29. When validly enacted, the Schedules promulgated by the BOP are used by it and law enforcement officials in, among other things, enforcing Ohio's criminal drug laws, including those found in Chapter 2925 of the Revised Code. See R.C. 3719.18.

30. While the BOP's primary function is to simply adopt schedules of controlled substances in effect at the federal level, the BOP is also authorized to schedule additional substances; but only upon consideration and application of specifically-enumerated factors and/or upon making specific findings as to the potential for abuse. See R.C. 3719.41(A), 3719.44.

31. In exercising its scheduling functions, the BOP must comply with the administrative rulemaking requirements set forth in Chapter 119 of the Revised Code. Id. Among other things, those requirements include public notice, an opportunity for public comment, a public hearing, and review by the General Assembly's Joint Committee on Agency Rule Review ("JCARR").

32. The BOP's compliance with Chapter 119 is, thus, a statutory requisite to the BOP's authority and jurisdiction to adopt and/or add items to Ohio's schedules of controlled substances.

33. Consistent with other states' scheduling of potent 7-OH products, the BOP, in or about early December 2025, initiated the process, with the support of the Governor, of adopting an emergency rule that would result in the immediate addition to Schedule I of "mitragynine-related compounds" (the "Emergency Mitragynine-Related Compounds Rule"). As publicly acknowledged by the BOP, however, the Governor made clear that "natural kratom in vegetation form" should not be scheduled. A true and accurate copy of the Governor's Executive Order, issued December 12, 2025, is attached as Exhibit A.

34. The terms of the Emergency Mitragynine-Related Compounds Rule enacted by the BOP, however, did not accomplish the publicly-stated intent. Instead, in pertinent part, such rule exempted only "Mitragynine."

35. On its face, this exemption did not carve out natural kratom leaf or kratom leaf products because, as noted above, even the leaf itself contains trace (but toxicologically insignificant) amounts of 7-OH.

E. <u>December 2025 Public Records Request.</u>

36. Following issuance of the Governor's Executive Order, on or about December 16, 2025, BT submitted a public records request to the BOP (the "December 2025 Public Records Request") seeking an opportunity to "immediately inspect and potentially request copies of the following public records" which would further illustrate the BOP's errors:

> . . . For purposes of this request, "Executive Order" refers to Executive Order 20250-08D, a copy of which is attached hereto as Exhibit A"
>
> 1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse the public health and safety risk of the foregoing or products containing the same.
>
> 2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.
>
> 3. The files, maintained in electronic or paper form, containing drafts of the Executive Order.
>
> 4. The files, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.

37. The December 2025 Public Records Request reminded the BOP that the "Public Records Act requires that 'all public records in response to the request should be promptly prepared and made available for inspection to any person at all reasonable times during regular business

hours.'" And BT further added "we are prepared to have a representative appear at the Ohio Pharmacy Board to inspect the records at the earliest possible time." A true and accurate copy of the foregoing public records request is attached hereto as Exhibit C.

38. The BOP responded to the December 2025 Public Records Request ***some three months later***. A true and accurate copy of the BOP March 20, 2026 email is attached as Exhibit D. In response, the BOP stated as to every requested document, save for one, ***it did not possess any responsive documents***. And as to any drafts of the Executive Order, the BOP invoked the attorney -client privilege. In short, it ***took the BOP three months to deny Relator any inspection rights***.

> The Ohio Board of Pharmacy provides the following responses to your public records request (attached) of December 16, 2025:
>
> 1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse [sic] the public health and safety risk of the foregoing or products containing the same.
>
> **The Board does not have any documents responsive to this request.**
>
> 2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.
>
> **The Board does not have any documents responsive to this request.**
>
> 3. The files, mtainined [sic] in electronic or paper form, containing drafts of the Executive Order.
>
> **Pursuant to Section 149.43(A)(1)(v) of the Ohio Revised Code, documents which constitute attorney-client privileged communications are not public record and have not been provided.**
>
> 4. The file, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.
>
> **The Board does not have any documents responsive to this request.**

F. Emergency Rule Lawsuit.

39. Sellers of natural kratom products sued the BOP in Channel Zero Marketing, LLC, et al. v. Ohio Board of Pharmacy, Case No. 2026 CV 000497 (Franklin C.P.) (McIntosh, J.) (the "Emergency Rule Lawsuit") on January, 20, 2016. Faced with the Governor's and its own statements about the intent of the emergency rule, the BOP ultimately agreed to a final consent judgment entry in the Emergency Rule Lawsuit in which the Court declared that "the Emergency Mitragynine-Related Compounds Rule was not intended to, and does not, schedule or otherwise apply to natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds."

40. The court also permanently enjoined the BOP from "taking any steps to enforce or otherwise attempting to enforce, or from directing, acting in concert with, or advising any other entity (including, without limitation, law enforcement) to enforce or attempt to enforce the Emergency Mitragynine-Related Compounds Rule as to natural kratom and/or natural kratom leaf products that contain trace amounts of mitragynine-related compounds." A true and accurate copy of the Final Consent Judgment Entry entered in the Emergency Rule Lawsuit is attached as Exhibit B.

G. February 2026 Public Records Request.

41. On or about February 4, 2026, BT served a public records request on the BOP and its board members (the "February 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit E. For purposes of the Public Records Request, the following definitions were provided:

> (a) "Board Leadership" means individually and collectively Steven W. Schierholt, Esq., Executive Director; Eric Griffin, Director of Compliance and Enforcement; Sharon Maerten-Moore, Chief Legal Counsel; Cameron McNamee, Director of Policy and

Communications' Karrie Southard, Director of Operations; Jolene DeFiore-Hyrmer, Chief Data Officer' Chad Garner, Director of OARRS; and Jenni Wai, Chief Pharmacist.

(b) "Board Members" means individually and collectively Jeff Huston, BPharm, PharmD, R.Ph.; Jason M. George, PharmD; Trina Buettner, R.Ph.; Anthony J. Buchta, Sr., R.Ph.; Mindy Ferris, R.Ph.; Leonard J. Hubert; Tod J. Grimm, R.Ph., MBA; D. Rich Miller III, B.S., R.Ph.; Tom Whiston, R.Ph.

(c) "Consent Order" means the consent order attached as Exhibit A hereto.

(d) "Proposed Rule 4729.9-1-01.1" refers to Proposed Rule 4729.9-1-01.1 (Mitragynine-Related Compounds).

(e) "Proposed Rule 4729.9-1-01.2" refers to Proposed Rule 4729.9-1-01.2 (Mitragynine).

(f) "Mitragynine-Related Compounds" shall have the same meaning as that term is utilized in the BOP's February 2, 2026, Resolution.

(g) "Lawsuit" means the action captioned Channel Zero Marketing, LLC, et al. v. Ohio Board of Pharmacy, Franklin County, Ohio Common Pleas Court Case No. 26CV000497.

42. The February 2026 Public Records Request requested an opportunity to inspect the following:

1. The calendars of the Board Leadership and Board Members for the time period January 1, 2025 to the present.

2. For the time period January 1, 2025 to the present, the BOP files, whether maintained in electronic or paper form, containing any emails or other communications between or among, individually or by group, any of the Board Leadership or Board Members regarding:

   a. Proposed Rule 4729.9-1-01.1;

   b. Proposed Rule 4729.9-1-01.2;

   c. Kratom;

   d. Consent Order;

e. Lawsuit; and/or

f. Mitragynine-Related Compounds.

3. For the time period January 1, 2025 to the present, all text messages including, between, or among, individually or by group, any of the Board Leadership or Board Members regarding:

a. Proposed Rule 4729.9-1-01.1;

b. Proposed Rule 4729.9-1-01.2;

c. Kratom;

d. Consent Order;

e. Lawsuit; and/or

f. Mitragynine-Related Compounds.

4. Minutes and draft minutes from BOP's February 2, 2026 Board Meeting.

5. Any audio or video recordings of BOP's February 2, 2026 Board Meeting.

43. The BOP acknowledged receipt of this request on February 5, 2026 but did not produce any responsive documents until May 4, 2026—***some three months after receipt of the February Public Records Request***. Even then, the BOP produced a mere 42 items.

H. The BOP Promulgates The Mitragynine-Related Compounds Rule, Which Purports To Exempt From Scheduling "Natural Kratom Leaf" In Vegetation Form.

44. By law, the BOP's Emergency Mitragynine-Related Compounds Rule only had temporary effect. Thus, the BOP proceeded with an R.C. Chapter 119 administrative process that resulted in its promulgation of the formal Mitragynine-Related Compounds Rule, which took effect on May 19, 2026.

45. The final rule is identical to its "emergency" predecessor, except in one respect. The emergency rule's court-modified exemption for "Mitragynine" has now been replaced with

the following: “Mitragynine in vegetation form, including natural kratom leaf and ground natural kratom leaf, in accordance with Chapter 3715. of the Revised Code.” A true and accurate copy of the Mitragynine-Related Compounds Rule is attached as Exhibit F. Nothing in the express language of this rule purports to condition the stated exemption on whether or not the natural kratom leaf or powder: (a) is marketed or sold for purposes of ingestion; (b) is literally sold only as an actual leaf or bag of powder; or (c) is mixed with other legal substances, like water.

46. Further, the adopted Mitragynine-Related Compounds Rule provides no specificity as to the applicability or relevance of Chapter 3715—i.e., Ohio’s Pure Food and Drug Law (the “OPFDL”), which includes many provisions. It does, however, make clear the BOP’s intent that natural kratom leaf and ground natural kratom leaf are **not** to be treated as Schedule I substances.

I. The BOP Issues Public “Guidance” In Which It Announces A Standard That Effectively Eviscerates And Nullifies The Mitragynine-Related Compounds Rule’s Exemption For Natural Kratom.

47. Rather than allowing the language of its promulgated rule to speak for itself, the BOP went further and issued a May 14, 2026, “Consumer and Retailer Notice” (the “5/14/26 Notice”) in which it purported to provide “guidance” regarding the final Mitragynine-Compounds Rule. A true accurate copy of the 5/14/26 Notice is attached as Exhibit G.

48. In reality, through this unpromulgated “guidance”—essentially a press release—the BOP announced a new statewide standard that: (1) effectively results in a statewide ban (indeed, criminalization) of the sale of natural leaf kratom and natural leaf kratom products, and (2) thereby eviscerates and nullifies the very exemption the BOP, itself, purported to enact in Ohio Admin. Code § 4729:9-1-01.1(D).

49. Referring generally to the “legal authority” of, and unpromulgated “guidance” from, the ODA, a separate agency, the BOP proclaimed in the 5/14/26 Notice that “natural kratom

may only be sold in its whole or dried leaf form or powdered form as long as it is not marketed as a food, drug, or dietary supplement." (Emphasis by the BOP.) In other words, the BOP proclaimed in its Notice that natural kratom leaf and natural kratom leaf products are Schedule I controlled substances if they are marketed or sold as being ingestible. In doing so, the BOP purported to make its scheduling determination contingent on whether or not a product is sold in compliance with R.C. Chapter 3715: *"**Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026***. [Id. (bold and italics by the BOP, underlining added).]

50. Because, as noted above, the historical and only known uses of natural kratom involve its ingestion as a food or dietary supplement (even in natural leaf or powder form), this new "guidance" from the BOP amounts to a statewide prohibition on the marketing and sale of natural kratom in Ohio—a prohibition that the terms of the Mitragynine-Related Compounds Rule do not, themselves, impose.

51. In proclaiming this new standard, and in addition to generically referencing (and, apparently, interpreting) the unspecified "legal authority" of another agency (ODA), the BOP pointed to a separate public notice (i.e., press release) from ODA in which that agency purported to announce that "Natural Kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product.)" A true and accurate copy of the ODA's public pronouncement, available at https://agri.ohio.gov/divisions/food-safety/resources/Kratom, is attached as Exhibit H.

52. The ODA purported to base this proclamation, which it, likewise, did not adopt or promulgate via the Chapter 119 rulemaking process, on OPFDL provisions related to the marking

and treatment of allegedly "adulterated" foods, drugs, and supplements. See R.C. 3715.55, 3715.59, 3715.83.

53. But, on their face, those provisions afford neither the BOP nor ODA with jurisdiction or authority to declare an entire class of foods, supplements, or drugs "adulterated." Specifically, those provisions do not empower either the BOP or ODA to impose a blanket ban on an entire category of foods (whether on the basis of alleged "adulterat[ion]" or otherwise), let alone to do so without following the Chapter 119 rulemaking process. Rather, R.C. 3715.55(B), (C), and (D) provide only for a **case-by-case process** to determine whether a particular product based on its form, dosage, and directions for use presents a significant or unreasonable risk of illness or injury, in which case the designating agency must affix a "tag" to the specific good(s) at issue, which then triggers an "embargo[]" or "detain[ment]" of the goods **and** a judicial review process that affords the owner/possessor of the allegedly adulterated product(s) with an opportunity to challenge such designation in the local municipal or county court.

54. Further, even where the OPFDL authorizes ODA to adopt rules, that authority is subject to a key limitation: "the rules shall be no more restrictive than the regulations promulgated under the federal 'Food, Drug, and Cosmetic Act,' 52 Stat. 1040 (1938), 21 U.S.C.A. 301, et seq., as amended." R.C. 3715.82. Since no federal blanket ban on the sale of natural kratom and natural kratom products is in effect, even a promulgated rule imposing such a ban would necessarily be unlawful and ineffective.

55. At bottom, the BOP has announced a new rule, without following the Chapter 119 process, that eviscerates a key carve-out in the Mitragynine-Related Compounds Rule, on the basis of its own interpretation of the authority and similarly unpromulgated pronouncements of the ODA that ODA, itself, lacked authority to make.

56. Accordingly, the BOP's 5/14/26 Notice was an unlawful and invalid rule that otherwise exceeds its (and ODA's) statutory jurisdiction.

K. Yet Another Restraining Order Is Issued Against The BOP.

57. On May 21, 2026, a complaint was filed in the Franklin County Common Pleas Court captioned Krazy Daze Inc. v. Ohio Board of Pharmacy, Case No. 26-CV-004790, for declaratory and injunctive relief against the Mitragynine-Related Compounds Rule. Following an initial injunction order in a related case and then a preliminary injunction hearing, the trial court issued an order in favor of BT enjoining the BOP as follows:

> Defendant the Ohio Board of Pharmacy, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this Order, are enjoined from treating and shall not treat as a Schedule I (or other) controlled substance any product that contains, as an ingredient, vegetative kratom in either leaf or ground up/pulverized leaf form, whether the product is sold in liquid, capsule, or other form and irrespective of whether the product is marketed for ingestion or consumption. This order does not prohibit the Ohio Department of Agriculture from enforcing Ohio Revised Code 3715 et. Seq. as it relates to any of the above substances or products. For the avoidance of doubt, this Order specifically applies to and includes, without limitation, Plaintiff Botanic Tonics, LLC's "Feel Free" line of products.

A true and accurate copy of the June 4, 2026, Order Extending and Modifying Temporary Restraining Order is attached hereto as Exhibit I.

L. May 22, 2026 Public Records Request.

58. On or about May 22, 2026, BT served a public records request on the BOP (the "May 22 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit J, seeking an opportunity to "immediately inspect and potentially request copies of the following public records:"

1. The files, maintained in electronic and/or paper form, containing all drafts and/or revisions of the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio Exhibit issued on May 14, 2026, and attached hereto as Exhibit A.

2. The files, maintained in electronic and/or paper form, containing any email or other communications to and from any person involved in preparing, drafting or offering input regarding or relating to Exhibit A.

3. The files, maintained in electronic and/or paper form, containing communications received from The Ohio Joint Committee on Agency Rule Review, the Ohio General Assembly, and/or any of their respective members regarding Exhibit A and/or the contents thereof.

59. The BOP acknowledged receipt of the May 22, 2026 Public Records Request but has failed to produce any public records, let alone make them available for inspection during regular business hours.

M. <u>May 26, 2026 Public Records Request.</u>

60. On or about May 26, 2026, BT served a public records request on the BOP (the "May 26 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit K, seeking an opportunity to "immediately inspect and potentially request copies of the following public records:"

1. The files, maintained in electronic and/or paper form, containing any email or other communications to and from the Ohio Department of Agriculture regarding or relating to (a) the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio issued on May 14, 2026, and attached hereto as Exhibit A; (b) the "Kratom Fact Sheet" (including any prior versions of the same) which is attached as Exhibit B; and/or (c) Rule 4729:9-1001.1, including the enforcement or non-enforcement of the same.

61. The BOP acknowledged receipt the May 26, 2026 Public Record Request but has failed to produce any public records, let alone make them available for inspection during regular business hours.

COUNT I

(Failure to Produce And/Or Timely Produce Public Records)

62. BT repeats and realleges the foregoing allegations as if fully set forth herein.

63. The BOP has, without justification, failed to timely produce the requested public records in violation of Section 149.43(B)(2).

64. The BOP' refusal to produce the public records causes irreparable harm for which there is no adequate remedy in law. Therefore, BT is entitled to a writ of mandamus requiring BOP to produce the documents requested.

65. At all relevant times, the BOP has acted in bad faith.

COUNT II

(Failure To Timely Make Records Available For Inspection)

66. BT repeats and realleges the foregoing allegations as if fully set forth herein.

67. Under Section 149.43(B)(1), "all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Additionally, "a public office or a person responsible for public records shall make copies available at cost, within a reasonable period of time."

68. The BOP has repeatedly failed to timely make public records available for inspection. Such delay has irreparably harmed BT, for which there is no adequate remedy at law. BT is entitled to a writ of mandamus requiring the BOP to produce public records within a reasonable period of time.

WHEREFORE, Relator prays for the following:

A. A writ of mandamus compelling Respondent to make public records available for inspection;

B. A writ of mandamus compelling Respondent to provide copies of requested public records within a reasonable period of time;

C. An award of statutory damages;

D. Its costs and expenses, including attorneys' fees incurred herein; and

E. Such other and further relief as this Court deems appropriate.

Respectfully submitted,

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
8000 Walton Parkway, Suite 260
New Albany, OH 43054
614.365.9900
614.365.7900 (facsimile)
little@litohio.com
hogan@litohio.com

Attorneys for Relator
Botanic Tonics, LLC

1431-001:1088895v.3

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., BOTANIC TONICS, LLC 13105 E 61st St, Suite A Broken Arrow, OK 74012, Relator, vs. OHIO BOARD OF PHARMACY 77 S. High Street, Suite 1702 Columbus, OH 43215, Respondent.	)	Case No. _____ ORIGINAL ACTION IN MANDAMUS

AFFIDAVIT OF YIN ZOU

STATE OF NEW YORK :
: SS
COUNTY OF KINGS :

Yin Zou, first being duly sworn according to law, deposes and states that she has personal knowledge of matters set forth herein except as specifically noted otherwise, and further states as follows:

1. I am the Chief Compliance and Regulatory Officer of Botanic Tonics, LLC.

2. BT is an Oklahoma-based manufacturer of dietary supplements made with natural, pure-leaf vegetative kratom in its dried and powdered form infused with water and with other legal dietary ingredients ("Natural-Leaf Kratom Dietary Supplements"). BT's Natural-Leaf Kratom Dietary Supplements are distributed in Ohio and sold by more than 1,600 retailers in Ohio. To its knowledge, BT is the only manufacturer of a liquid kratom product made with natural, ground up kratom leaves in their vegetative form, as opposed to concentrated kratom extracts.

3. The BOP is an Ohio state agency; a "public office" as that term is defined under Section 149.011(A) of the Ohio Revised Code; and has custody of (and has kept) the records which are the subject of this action.

A. <u>Centuries Of Natural Kratom Use, And Scientific Studies, Confirm Its Safety.</u>

4. Kratom (Mitragyna Speciosa) is an evergreen tree native to Southeast Asia.

5. People have used kratom in various ways for hundreds of years, resulting in a long history of proven safe, traditional use. All of those uses involve ingestion.

6. Chewing the leaves of kratom, drinking teas, infusions and water-based decoctions prepared from kratom leaves or consuming dried/powdered leaves have been practiced for centuries, especially in Thailand, Malaysia, Indonesia and Papua New Guinea.

7. Since the mid-1970's, natural kratom leaf products have gained popularity as foods or dietary supplements in the United States and other western countries. Users of these natural products, which can incorporate dried or powdered forms of natural kratom leaves, often claim the same benefits, among others, as traditional kratom users have reported experiencing for centuries: improved energy and mood without psychoactive effects.

8. Some of the natural, dried leaf kratom-containing products sold in the United States include natural leaf kratom supplements (the "Natural-Leaf Kratom Dietary Supplements") marketed as dietary supplements. Those tonics, in pertinent part, contain kratom in only its vegetative natural form: finely divided (comminuted)/powdered kratom leaves infused with water that have been dried and shipped from the parts of the world where the tree is indigenous.

9. Consumed responsibly in its natural leaf or dried/powdered leaf form that limits the concentration of key bioactive compounds, kratom has proven to be safe and devoid of any significant or unreasonable risk of illness or injury. On top of centuries of experience with its safe

and responsible use in other countries, scientific studies have found no evidence that the daily ingestion of even moderate amounts of natural kratom in pure or dried/powdered leaf form has either short-term or long-term negative health consequences to the consumer.

10. The principal, active ingredient in natural kratom is an alkaloid compound known as mitragynine. In its natural form, and in the amounts present in the Natural-Leaf Kratom Dietary Supplements (20 mg per daily dose, with a maximum recommendation of two doses per day), mitragynine has proven and been scientifically shown to be safe for human consumption, with atypical minimal (and inconsequential) risk of and/or incidences of negative health consequences.

11. Although pure mitragynine is the alkaloid compound in natural kratom (typically representing around one-half or two-thirds of the total alkaloid content), the natural leaf typically also contains trace—although pharmacologically insignificant—amounts of 7-hydroxymitragynine (also known as 7-OH). These trace levels are so low as to have no impact on the already minimal risk profile of natural kratom leaf products.

B. In Contrast To The Natural-Leaf Kratom Dietary Supplements Manufactured And Sold By Plaintiffs, Some Companies Have Manufactured And Marketed Dangerous Synthetic And/Or Concentrated Products Containing Large Amounts Of 7-OH That Present A Much Different Risk Profile For Consumers.

12. In contrast to natural, leaf kratom products, including the Natural-Leaf Kratom Dietary Supplements manufactured by BT, some manufacturers and distributors have begun producing and offering non-natural products in the form of synthetic mitragynine concentrates or isolates that deliver the mitragynine at much higher levels than those associated with traditional use and/or concentrated or synthetic 7-OH (the "Enhanced 7-OH Products").

13. Given that the amounts of 7-OH in these types of products are far in excess of the trace levels found in traditional or natural kratom leaf products, such products may pose a

significant health risk given 7-OH at higher concentrations acts pharmacologically as a potent opioid (specifically, a μ-opioid agonist). Products containing isolated or concentrated mitragynine also give rise to substantial health concerns because mitragynine is metabolized in the human liver to 7-OH (the low levels of mitragynine in the Natural-Leaf Kratom Dietary Supplements are insufficient to be of toxicological concern).

14. With the levels found in synthetic or concentrated products, exposure to 7-OH has, thus, been found to have opiate-like effects and to present a heightened risk for psychological and/or physiological dependency (addiction).

15. Thus, to the extent public health concerns exist as to the sale of kratom-derived products, those concerns are driven by and arise from the problematic Enhanced 7-OH Products and, to a lesser extent, from the products based on concentrated or isolated mitragynine (that give rise to toxicologically significant exposure to 7-OH following conversion by the liver); **not** by natural kratom leaf products, including the Natural-Leaf Kratom Dietary Supplements, which deliver an alkaloid profile that is in line with products used traditionally in the Southeast Asian region for centuries.

C. The BOP's Initial, Botched Effort To Schedule Enhanced 7-OH Products Via An Improper "Emergency" Rule.

16. In or about July 2025, the federal Food and Drug Administration ("FDA") took steps to alert the public and medical professionals to the potential dangers of and health risks associated with Enhanced 7-OH Products. See https://www.fda.gov/news-events/press-announcements/fda-takes-steps-restrict-7-oh-opioid-products-threatening-american-consumers.

17. The FDA noted that it was "specifically targeting 7-OH, a concentrated byproduct of the kratom plant; it is not focused on natural kratom leaf products." Id.

18. In an Opinion Editorial published in the New York Post on or about July 29, 2025, former FDA Commissioner Dr. Marty Makary stated: "To be clear, the kratom plant leaf, which contains trace amounts of 7-OH and has been consumed for centuries, is not our focus at the FDA. Rather, we are seeking to remove a dangerous synthetic opioid from retail shelves nationwide." See https://nypost.com/2025/07/29/opinion/beware-synthetic-kratom-7-oh-powers-a-new-opioid-crisis/.

19. Consistent with this federal guidance, the Ohio General Assembly continues to consider, at the committee level, legislation that would regulate natural kratom leaf products, while banning synthetic forms of 7-OH. See https://legiscan.com/OH/drafts/HB587/2025.

20. Other states have taken steps to do just that. Florida's Attorney General, for instance, issued an emergency rule in August 2025 that adds to Schedule I (in that state) products containing 7-OH above 400 parts per million on a dry-weight basis—a concentration far higher than that found in natural leaf kratom (including in the Natural-Leaf Kratom Dietary Supplements). See https://www.myfloridalegal.com/sites/default/files/2025-09/2er25-2.pdf. While Florida regulates the sale of natural kratom leaf products, it has drawn a bright line between them and Enhanced 7-OH products, which are banned by the state's emergency rule. Id.

21. Among other things, the BOP is statutorily charged with adopting and updating rules "establishing schedule I, schedule II, schedule III, schedule IV, and schedule V [drugs in Ohio] incorporating the five schedules of controlled substances under the federal drug abuse control laws." See R.C. 3719.41(A) & (B).

22. When validly enacted, the Schedules promulgated by the BOP are used by it and law enforcement officials in, among other things, enforcing Ohio's criminal drug laws, including those found in Chapter 2925 of the Revised Code. See R.C. 3719.18.

23. While the BOP's primary function is to simply adopt schedules of controlled substances in effect at the federal level, the BOP is also authorized to schedule additional substances; but only upon consideration and application of specifically-enumerated factors and/or upon making specific findings as to the potential for abuse. See R.C. 3719.41(A), 3719.44.

24. In exercising its scheduling functions, the BOP must comply with the administrative rulemaking requirements set forth in Chapter 119 of the Revised Code. Id. Among other things, those requirements include public notice, an opportunity for public comment, a public hearing, and review by the General Assembly's Joint Committee on Agency Rule Review ("JCARR").

25. The BOP's compliance with Chapter 119 is, thus, a statutory requisite to the BOP's authority and jurisdiction to adopt and/or add items to Ohio's schedules of controlled substances.

26. Consistent with other states' scheduling of potent 7-OH products, the BOP, in or about early December 2025, initiated the process, with the support of the Governor, of adopting an emergency rule that would result in the immediate addition to Schedule I of "mitragynine-related compounds" (the "Emergency Mitragynine-Related Compounds Rule"). As publicly acknowledged by the BOP, however, the Governor made clear that "natural kratom in vegetation form" should not be scheduled. A true and accurate copy of the Governor's Executive Order, issued December 12, 2025, is attached as Exhibit A.

27. The terms of the Emergency Mitragynine-Related Compounds Rule enacted by the BOP, however, did not accomplish the publicly-stated intent. Instead, in pertinent part, such rule exempted only "Mitragynine."

28. On its face, this exemption did not carve out natural kratom leaf or kratom leaf products because, as noted above, even the leaf itself contains trace (but toxicologically insignificant) amounts of 7-OH.

D. <u>December 2025 Public Records Request.</u>

29. Following issuance of the Governor's Executive Order, on or about December 16, 2025, BT submitted a public records request to the BOP (the "December 2025 Public Records Request") seeking an opportunity to "immediately inspect and potentially request copies of the following public records" which would further illustrate the BOP's errors:

> . . . For purposes of this request, "Executive Order" refers to Executive Order 20250-08D, a copy of which is attached hereto as Exhibit A"
>
> 1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse the public health and safety risk of the foregoing or products containing the same.
>
> 2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.
>
> 3. The files, maintained in electronic or paper form, containing drafts of the Executive Order.
>
> 4. The files, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.

30. The December 2025 Public Records Request reminded the BOP that the "Public Records Act requires that 'all public records in response to the request should be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.'" And BT further added "we are prepared to have a representative appear at the Ohio Pharmacy Board to inspect the records at the earliest possible time." A true and accurate copy of the foregoing public records request is attached hereto as Exhibit C.

31. The BOP responded to the December 2025 Public Records Request ***some three months later***. A true and accurate copy of the BOP March 20, 2026 email is attached as Exhibit D. In response, the BOP stated as to every requested document, save for one, ***it did not possess any responsive documents***. And as to any drafts of the Executive Order, the BOP invoked the attorney -client privilege. In short, it ***took the BOP three months to deny Relator any inspection rights***.

> The Ohio Board of Pharmacy provides the following responses to your public records request (attached) of December 16, 2025:
>
> 1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse [sic] the public health and safety risk of the foregoing or products containing the same.
>
>   **The Board does not have any documents responsive to this request.**
>
> 2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.
>
>   **The Board does not have any documents responsive to this request.**
>
> 3. The files, mtainined [sic] in electronic or paper form, containing drafts of the Executive Order.
>
>   **Pursuant to Section 149.43(A)(1)(v) of the Ohio Revised Code, documents which constitute attorney-client privileged communications are not public record and have not been provided.**
>
> 4. The file, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.
>
>   **The Board does not have any documents responsive to this request.**

E. Emergency Rule Lawsuit.

32. Sellers of natural kratom products sued the BOP in Channel Zero Marketing, LLC, et al. v. Ohio Board of Pharmacy, Case No. 2026 CV 000497 (Franklin C.P.) (McIntosh, J.) (the

"Emergency Rule Lawsuit") on January, 20, 2016. Faced with the Governor's and its own statements about the intent of the emergency rule, the BOP ultimately agreed to a final consent judgment entry in the Emergency Rule Lawsuit in which the Court declared that "the Emergency Mitragynine-Related Compounds Rule was not intended to, and does not, schedule or otherwise apply to natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds."

33. The court also permanently enjoined the BOP from "taking any steps to enforce or otherwise attempting to enforce, or from directing, acting in concert with, or advising any other entity (including, without limitation, law enforcement) to enforce or attempt to enforce the Emergency Mitragynine-Related Compounds Rule as to natural kratom and/or natural kratom leaf products that contain trace amounts of mitragynine-related compounds." A true and accurate copy of the Final Consent Judgment Entry entered in the Emergency Rule Lawsuit is attached as Exhibit B.

F. <u>February 2026 Public Records Request.</u>

34. On or about February 4, 2026, BT served a public records request on the BOP and its board members (the "February 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit E. For purposes of the Public Records Request, the following definitions were provided:

(a) "Board Leadership" means individually and collectively Steven W. Schierholt, Esq., Executive Director; Eric Griffin, Director of Compliance and Enforcement; Sharon Maerten-Moore, Chief Legal Counsel; Cameron McNamee, Director of Policy and Communications' Karrie Southard, Director of Operations; Jolene DeFiore-Hyrmer, Chief Data Officer' Chad Garner, Director of OARRS; and Jenni Wai, Chief Pharmacist.

(b) "Board Members" means individually and collectively Jeff Huston, BPharm, PharmD, R.Ph.; Jason M. George, PharmD; Trina

Buettner, R.Ph.; Anthony J. Buchta, Sr., R.Ph.; Mindy Ferris, R.Ph.; Leonard J. Hubert; Tod J. Grimm, R.Ph., MBA; D. Rich Miller III, B.S., R.Ph.; Tom Whiston, R.Ph.

(c) "Consent Order" means the consent order attached as Exhibit A hereto.

(d) "Proposed Rule 4729.9-1-01.1" refers to Proposed Rule 4729.9-1-01.1 (Mitragynine-Related Compounds).

(e) "Proposed Rule 4729.9-1-01.2" refers to Proposed Rule 4729.9-1-01.2 (Mitragynine).

(f) "Mitragynine-Related Compounds" shall have the same meaning as that term is utilized in the BOP's February 2, 2026, Resolution.

(g) "Lawsuit" means the action captioned Channel Zero Marketing, LLC, et al. v. Ohio Board of Pharmacy, Franklin County, Ohio Common Pleas Court Case No. 26CV000497.

35. The February 2026 Public Records Request requested an opportunity to inspect the following:

1. The calendars of the Board Leadership and Board Members for the time period January 1, 2025 to the present.

2. For the time period January 1, 2025 to the present, the BOP files, whether maintained in electronic or paper form, containing any emails or other communications between or among, individually or by group, any of the Board Leadership or Board Members regarding:

   a. Proposed Rule 4729.9-1-01.1;

   b. Proposed Rule 4729.9-1-01.2;

   c. Kratom;

   d. Consent Order;

   e. Lawsuit; and/or

   f. Mitragynine-Related Compounds.

3. For the time period January 1, 2025 to the present, all text messages including, between, or among, individually or by group, any of the Board Leadership or Board Members regarding:

a. Proposed Rule 4729.9-1-01.1;

b. Proposed Rule 4729.9-1-01.2;

c. Kratom;

d. Consent Order;

e. Lawsuit; and/or

f. Mitragynine-Related Compounds.

4. Minutes and draft minutes from BOP's February 2, 2026 Board Meeting.

5. Any audio or video recordings of BOP's February 2, 2026 Board Meeting.

36. The BOP acknowledged receipt of this request on February 5, 2026 but did not produce any responsive documents until May 4, 2026—***some three months after receipt of the February Public Records Request***. Even then, the BOP produced a mere 42 items.

G. The BOP Promulgates The Mitragynine-Related Compounds Rule, Which Purports To Exempt From Scheduling "Natural Kratom Leaf" In Vegetation Form.

37. By law, the BOP's Emergency Mitragynine-Related Compounds Rule only had temporary effect. Thus, the BOP proceeded with an R.C. Chapter 119 administrative process that resulted in its promulgation of the formal Mitragynine-Related Compounds Rule, which took effect on May 19, 2026.

38. The final rule is identical to its "emergency" predecessor, except in one respect. The emergency rule's court-modified exemption for "Mitragynine" has now been replaced with the following: "Mitragynine in vegetation form, including natural kratom leaf and ground natural kratom leaf, in accordance with Chapter 3715. of the Revised Code." A true and accurate copy of

the Mitragynine-Related Compounds Rule is attached as Exhibit F. Nothing in the express language of this rule purports to condition the stated exemption on whether or not the natural kratom leaf or powder: (a) is marketed or sold for purposes of ingestion; (b) is literally sold only as an actual leaf or bag of powder; or (c) is mixed with other legal substances, like water.

39. Further, the adopted Mitragynine-Related Compounds Rule provides no specificity as to the applicability or relevance of Chapter 3715—i.e., Ohio's Pure Food and Drug Law (the "OPFDL"), which includes many provisions. It does, however, make clear the BOP's intent that natural kratom leaf and ground natural kratom leaf are **not** to be treated as Schedule I substances.

H. The BOP Issues Public "Guidance" In Which It Announces A Standard That Effectively Eviscerates And Nullifies The Mitragynine-Related Compounds Rule's Exemption For Natural Kratom.

40. Rather than allowing the language of its promulgated rule to speak for itself, the BOP went further and issued a May 14, 2026, "Consumer and Retailer Notice" (the "5/14/26 Notice") in which it purported to provide "guidance" regarding the final Mitragynine-Compounds Rule. A true accurate copy of the 5/14/26 Notice is attached as Exhibit G.

41. In reality, through this unpromulgated "guidance"—essentially a press release—the BOP announced a new statewide standard that: (1) effectively results in a statewide ban (indeed, criminalization) of the sale of natural leaf kratom and natural leaf kratom products, and (2) thereby eviscerates and nullifies the very exemption the BOP, itself, purported to enact in Ohio Admin. Code § 4729:9-1-01.1(D).

42. Referring generally to the "legal authority" of, and unpromulgated "guidance" from, the ODA, a separate agency, the BOP proclaimed in the 5/14/26 Notice that "natural kratom may only be sold in its whole or dried leaf form or powdered form as long as it is not marketed as a food, drug, or dietary supplement." (Emphasis by the BOP.) In other words, the BOP proclaimed

in its Notice that natural kratom leaf and natural kratom leaf products are Schedule I controlled substances if they are marketed or sold as being ingestible. In doing so, the BOP purported to make its scheduling determination contingent on whether or not a product is sold in compliance with R.C. Chapter 3715: "***Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026***. [Id. (bold and italics by the BOP, underlining added).]

43. Because, as noted above, the historical and only known uses of natural kratom involve its ingestion as a food or dietary supplement (even in natural leaf or powder form), this new "guidance" from the BOP amounts to a statewide prohibition on the marketing and sale of natural kratom in Ohio—a prohibition that the terms of the Mitragynine-Related Compounds Rule do not, themselves, impose.

44. In proclaiming this new standard, and in addition to generically referencing (and, apparently, interpreting) the unspecified "legal authority" of another agency (ODA), the BOP pointed to a separate public notice (i.e., press release) from ODA in which that agency purported to announce that "Natural Kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product.)" A true and accurate copy of the ODA's public pronouncement, available at https://agri.ohio.gov/divisions/food-safety/resources/Kratom, is attached as Exhibit H.

45. The ODA purported to base this proclamation, which it, likewise, did not adopt or promulgate via the Chapter 119 rulemaking process, on OPFDL provisions related to the marking and treatment of allegedly "adulterated" foods, drugs, and supplements. See R.C. 3715.55, 3715.59, 3715.83.

46. But, on their face, those provisions afford neither the BOP nor ODA with jurisdiction or authority to declare an entire class of foods, supplements, or drugs "adulterated." Specifically, those provisions do not empower either the BOP or ODA to impose a blanket ban on an entire category of foods (whether on the basis of alleged "adulterat[ion]" or otherwise), let alone to do so without following the Chapter 119 rulemaking process. Rather, R.C. 3715.55(B), (C), and (D) provide only for a **case-by-case process** to determine whether a particular product based on its form, dosage, and directions for use presents a significant or unreasonable risk of illness or injury, in which case the designating agency must affix a "tag" to the specific good(s) at issue, which then triggers an "embargo[]" or "detain[ment]" of the goods **and** a judicial review process that affords the owner/possessor of the allegedly adulterated product(s) with an opportunity to challenge such designation in the local municipal or county court.

47. Further, even where the OPFDL authorizes ODA to adopt rules, that authority is subject to a key limitation: "the rules shall be no more restrictive than the regulations promulgated under the federal 'Food, Drug, and Cosmetic Act,' 52 Stat. 1040 (1938), 21 U.S.C.A. 301, et seq., as amended." R.C. 3715.82. Since no federal blanket ban on the sale of natural kratom and natural kratom products is in effect, even a promulgated rule imposing such a ban would necessarily be unlawful and ineffective.

48. At bottom, the BOP has announced a new rule, without following the Chapter 119 process, that eviscerates a key carve-out in the Mitragynine-Related Compounds Rule, on the basis of its own interpretation of the authority and similarly unpromulgated pronouncements of the ODA that ODA, itself, lacked authority to make.

49. Accordingly, the BOP's 5/14/26 Notice was an unlawful and invalid rule that otherwise exceeds its (and ODA's) statutory jurisdiction.

I. Yet Another Restraining Order Is Issued Against The BOP.

50. On May 21, 2026, a complaint was filed in the Franklin County Common Pleas Court captioned Krazy Daze Inc. v. Ohio Board of Pharmacy, Case No. 26-CV-004790, for declaratory and injunctive relief against the Mitragynine-Related Compounds Rule. Following an initial injunction order in a related case and then a preliminary injunction hearing, the trial court issued an order in favor of BT enjoining the BOP as follows:

> Defendant the Ohio Board of Pharmacy, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this Order, are enjoined from treating and shall not treat as a Schedule I (or other) controlled substance any product that contains, as an ingredient, vegetative kratom in either leaf or ground up/pulverized leaf form, whether the product is sold in liquid, capsule, or other form and irrespective of whether the product is marketed for ingestion or consumption. This order does not prohibit the Ohio Department of Agriculture from enforcing Ohio Revised Code 3715 et. Seq. as it relates to any of the above substances or products. For the avoidance of doubt, this Order specifically applies to and includes, without limitation, Plaintiff Botanic Tonics, LLC's "Feel Free" line of products.

A true and accurate copy of the June 4, 2026, Order Extending and Modifying Temporary Restraining Order is attached hereto as Exhibit I.

J. May 22, 2026 Public Records Request.

51. On or about May 22, 2026, BT served a public records request on the BOP (the "May 22 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit J, seeking an opportunity to "immediately inspect and potentially request copies of the following public records:"

1. The files, maintained in electronic and/or paper form, containing all drafts and/or revisions of the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio Exhibit issued on May 14, 2026, and attached hereto as Exhibit A.

2. The files, maintained in electronic and/or paper form, containing any email or other communications to and from any person involved in preparing, drafting or offering input regarding or relating to Exhibit A.

3. The files, maintained in electronic and/or paper form, containing communications received from The Ohio Joint Committee on Agency Rule Review, the Ohio General Assembly, and/or any of their respective members regarding Exhibit A and/or the contents thereof.

52. The BOP acknowledged receipt of the May 22, 2026 Public Records Request but has failed to produce any public records, let alone make them available for inspection during regular business hours.

K. <u>May 26, 2026 Public Records Request.</u>

53. On or about May 26, 2026, BT served a public records request on the BOP (the "May 26 2026 Public Records Request"), a true and accurate copy of which is attached as Exhibit K, seeking an opportunity to "immediately inspect and potentially request copies of the following public records:"

1. The files, maintained in electronic and/or paper form, containing any email or other communications to and from the Ohio Department of Agriculture regarding or relating to (a) the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio issued on May 14, 2026, and attached hereto as Exhibit A; (b) the "Kratom Fact Sheet" (including any prior versions of the same) which is attached as Exhibit B; and/or (c) Rule 4729:9-1001.1, including the enforcement or non-enforcement of the same.

54. The BOP acknowledged receipt the May 26, 2026 Public Record Request but has failed to produce any public records, let alone make them available for inspection during regular business hours.

Further Affiant sayeth naught.

Yin Zou

Sworn to and subscribed in my presence this 25 day of June, 2026.

Notary Public

1089043

THOMAS A HOOKER
Notary Public, State of New York
Reg. No. 02HO6384548
Qualified in Kings County
Commission Expires December 17, 2026

MIKE DEWINE
GOVERNOR
STATE OF OHIO

Executive Order 2025-08D

The Emergency Adoption of Rule 4729:9-1-01.1 of the Ohio Administrative Code by the Ohio Board of Pharmacy

WHEREAS, kratom is a plant found in southeast Asia that is marketed in Ohio as an opioid alternative, despite having no approved uses[1]; and

WHEREAS, the effects of kratom depend on dose, with low doses having stimulant effects and high doses having opioid-like effects; and

WHEREAS, mitragynine is the primary psychoactive substance naturally found in kratom; and

WHEREAS, mitragynine can be easily altered by chemists to produce dangerous mitragynine-like compounds, such as 7-hydroxymitragynine ("7-OH")[2]; and

WHEREAS, dangerous mitragynine-like compounds, such as 7-OH, bear public health and safety risks as their potency are often significantly greater than that of morphine[3]; and

---

[1] US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec. 10, 2025.

[2] Cayman Chemical. NPS Snapshot: Kratom-Derived Semi-Synthetic Opioids. https://cdn2.caymanchem.com/cdn/cms/caymanchem/LiteratureCMS/NPS%20Snapshot%20Kratom-Derived%20Semi-Synthetic%20Opioids.pdf. Last accessed Dec. 10, 2025; Krotulski, AJ; Denn, MT; Brower, JO; Papsun, DM; Logan, BK. (2025) *Evaluation of Commercially Available Smoke Shop Products Marketed as "7-Hydroxy Mitragynine" & Related Alkaloids*, Center for Forensic Science Research and Education, United States.

[3] Cayman Chemical. NPS Snapshot: Kratom-Derived Semi-Synthetic Opioids. https://cdn2.caymanchem.com/cdn/cms/caymanchem/LiteratureCMS/NPS%20Snapshot%20Kratom-Derived%20Semi-Synthetic%20Opioids.pdf. Last accessed Dec. 10, 2025; Krotulski, AJ; Denn, MT; Brower, JO; Papsun, DM; Logan, BK. (2025) *Evaluation of Commercially Available Smoke Shop Products Marketed as "7-Hydroxy Mitragynine" & Related Alkaloids*, Center for Forensic Science Research and Education, United States; Makary, Marty. "FDA Warns Healthcare Professionals About 7-OH." July 29, 2025. https://www.fda.gov/media/187898/download?attachment. Last accessed Dec. 10, 2025; US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec, 10, 2025.

WHEREAS, adverse effects of products containing dangerous mitragynine-like compounds, such as 7-OH, have prompted the US Food and Drug Administration ("FDA") to suggest that those products are the next wave of the opioid crisis[4]; and

WHEREAS, according to the FDA, "[t]his public health threat is troubling and requires immediate and impactful policies to educate consumers and take regulatory action that limits access to 7-OH containing products."[5]; and

WHEREAS, Section 3719.45 of the Ohio Revised Code authorizes the Ohio Board of Pharmacy ("Board of Pharmacy") to add a previously unscheduled compound, mixture, preparation, or substance to Schedule I by emergency rule if the Board determines the compound has no accepted medical use in treatment in this state and poses an imminent hazard to the public health, safety, or welfare; and

WHEREAS, the Board of Pharmacy found that mitragynine-related compounds have no accepted medical use in treatment in this state, have a high potential for abuse, and pose an imminent hazard to the public health, safety, or welfare; and

WHEREAS, Section 119.03(G) of the Ohio Revised Code authorizes the Governor, on the request of a State agency, to suspend the normal rule making procedures with respect to specific rules when an emergency exists necessitating the immediate adoption, amendment, or rescission of such rules. When such a determination is made, the agency may immediately adopt, amend, or rescind such rules, but the rules are only valid for one hundred and eighty (180) days; and

WHEREAS, the Board of Pharmacy has requested a determination whether an emergency exists that requires 4729:9-1-01.1 on an emergency basis and that would therefore permit the Board of Pharmacy, pursuant to Section 3719.45 of the Ohio Revised Code, to immediately adopt this rule.

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, have determined, upon the request of the Board of Pharmacy, that an emergency exists requiring the immediate adoption of rule 4729:9-1-01.1 of the Ohio Administrative Code.

Further, I hereby order that the procedures prescribed by Section 119.03 of the Ohio Revised Code with respect to the adoption or amendment of the specified rule be suspended and that the Board of Pharmacy be permitted to adopt the rule immediately by filing it electronically with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review ("JCARR").

---

[4] Makary, Marty. "FDA Warns Healthcare Professionals About 7-OH." July 29, 2025. https://www.fda.gov/media/187898/download?attachment. Last accessed Dec. 10, 2025; US Food and Drug Administration. Preventing the Next Wave of the Opioid Epidemic: What You Need to Know About 7-OH. https://www.fda.gov/media/187913/download?attachment. Last accessed Dec. 10, 2025.

[5] US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec. 10, 2025.

Furthermore, I hereby order that this Executive Order be filed in electronic form with the Board of Pharmacy, the Secretary of State, the Director of the Legislative Service Commission, and JCARR.

Nothing in this Executive Order and Emergency Rule shall be construed to apply to natural kratom in vegetation form.

I signed this Executive Order on December 12, 2025, in Columbus, Ohio, and it will expire one hundred and eighty (180) days from the effective date of the emergency rule, or upon the adoption of the rule through the normal JCARR process, whichever is sooner.

Mike DeWine, Governor

ATTEST:

Frank LaRose, Secretary of State

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CHANNEL ZERO MARKETING, LLC, et al.	:	
	:	**Case No. 26 cv 0497**
Plaintiffs,	:	
	:	**Judge McIntosh**
v.	:	
	:	
OHIO BOARD OF PHARMACY,	:	
	:	
Defendant.	:	

FINAL CONSENT JUDGMENT ENTRY

Pursuant to the stipulation and agreement of the parties, Plaintiffs Channel Zero Marketing, LLC and JFL Energy, LLC ("Plaintiffs") and Defendant Ohio Board of Pharmacy ("Defendant"), the Court hereby finds:

BACKGROUND

1. Plaintiffs state that they are distributors, within the state of Ohio, of natural kratom leaf products made with natural, pure-leaf vegetative kratom in its dried and powdered form.

2. Defendant is an agency of the State of Ohio that is statutorily charged, under R.C. 3719.41(A) & (B), with adopting and updating rules, in accordance with Chapter 119 of the Revised Code, "establishing schedule I, schedule II, schedule III, schedule IV, and schedule V [drugs in Ohio] incorporating the five schedules of controlled substances under the federal drug abuse control laws."

3. On December 12, 2025, Governor Mike DeWine issued Executive Order 2024-08D (the "Executive Order"). In the Executive Order, the Governor determined that an emergency exists that permitted Defendant to adopt an emergency rule regarding the scheduling of "m[]itragynine-related compounds." In the Executive Order, Governor DeWine also stated that

"[n]othing in this Executive Order and Emergency Rule shall be construed to apply to natural kratom in vegetation form."

4. On December 12, 2025, Defendant adopted Ohio Admin. Code § 4729:9-1-01.1 as an emergency rule (the "Emergency Mitragynine-Related Compounds Rule"). The Emergency Mitragynine-Related Compounds Rule classified "[m]itragynine-related compounds" as schedule I controlled substances. The Emergency Mitragynine-Related Compounds Rule also states, in Ohio Admin. Code § 4729:9-1-01.1(A)(4), that "[m]itragynine" is not a "[m]itragynine-related compound[.]"

5. Kratom, even in its vegetation form, contains trace amounts of other mitragynine-related compounds; specifically, 7-hydroxymitragynine ("7-OH"). These trace amounts have not historically been detected by Ohio crime labs under current testing protocols.

6. On December 29, 2025, Defendant issued an updated Consumer and Retailer Notice about the Emergency Mitragynine-Related Compounds Rule (the "Updated Notice"). In the Updated Notice, Defendant included the following question and answer:

> Does the [Emergency Mitragynine-Related Compounds Rule] impact kratom in its natural vegetation state that contains trace amounts of 7-hydroxymitragine (7-OH)? (Updated 12/29/2025)
>
> Kratom that is sold in its natural vegetation state that contains trace amounts of 7-OH is not banned under the emergency rule. The Governor's Executive Order specifically exempts natural kratom in vegetation form. …

7. On January 20, 2026, Plaintiffs filed this lawsuit seeking a declaratory judgment interpreting the rule as well as injunctive relief barring Defendant from enforcing the Emergency Mitragynine-Related Compounds Rule as against the sale of natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

8. The Emergency Mitragynine-Related Compounds Rule is currently in effect with the same language originally adopted on December 12, 2025. However, Defendant agrees that it did not intend, by way of the Emergency Mitragynine-Related Compounds Rule, to schedule natural kratom and natural kratom leaf products that contain trace amounts of 7-OH or other mitragynine-related compounds.

RELIEF GRANTED

9. In accordance with these stipulations and the parties' agreement, and for good cause shown, the Court ORDERS, ADJUDGES, and DECREES, and hereby enters FINAL JUDGMENT, as follows:

A. Pursuant to Chapter 2721 of the Ohio Revised Code and Rule 57 of the Ohio Rules of Civil Procedure, the Court declares that the Emergency Mitragynine-Related Compounds Rule was not intended to, and does not, schedule or otherwise apply to natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

B. Defendant Ohio Board of Pharmacy is permanently enjoined from taking any steps to enforce or otherwise attempting to enforce, or from directing, acting in concert with, or advising any other entity (including, without limitation law enforcement) to enforce or attempt to enforce the Emergency Mitragynine-Related Compounds Rule as to natural kratom and/or natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

C. This Order does not bar the Defendant or any other party from enforcing the Emergency Mitragynine-Related Compounds Rule as applied to kratom products containing more than trace amounts of 7-OH or other mitragynine-related

compounds, or from exercising any other authority granted pursuant to Chapter 4729, Chapter 3719, or Chapter 3715 of the Ohio Revised Code.

D. This Order applies only to the Emergency Mitragynine-Related Compounds Rule, and does not restrict the Defendant from proposing or adopting any other rule relating to kratom products, mitragynine, or mitragynine-related compounds.

E. Each party shall bear its own attorneys' fees, expenses, and court costs.

F. Each of the undersigned parties, via its respective legal counsel, approves, and irrevocably waives all rights to appeal, this Final Consent Judgment Entry.

G. This is a FINAL JUDGMENT and the case is hereby TERMINATED.

H. The Court hereby retains continuing, exclusive jurisdiction to enforce, and to adjudicate any disputes or issues relating to, this Final Consent Judgment Entry.

IT IS SO ORDERED.

Judge Stephen L. McIntosh

SO STIPULATED:

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
8000 Walton Parkway, Ste. 260
New Albany, Ohio 43054
Telephone: (614) 365-9900
hogan@litohio.com
little@litohio.com

Counsel for Plaintiffs

/s/ *Katherine J. Bockbrader*
DAVE YOST (0056290)
Attorney General of Ohio

Katherine J. Bockbrader (0066472)
Assistant Attorney General

Salvatore Messina (0097510)
Assistant Attorney General

D. Grant Wilson (0100293)
Assistant Attorney General

30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Katherine.bockbrader@ohioago.gov
Salvatore.Messina@ohioago.gov
grant.wilson@ohioago.gov

Counsel for Defendant Ohio Board of Pharmacy

1431-001.1076033

Franklin County Court of Common Pleas

Date: 02-04-2026

Case Title: CHANNEL ZERO MARKETING LLC ET AL -VS- OHIO BOARD OF PHARMACY

Case Number: 26CV000497

Type: CONSENT JUDGMENT

It Is So Ordered.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 26CV000497

Case Style: CHANNEL ZERO MARKETING LLC ET AL -VS- OHIO BOARD OF PHARMACY

Case Terminated: 07 - Settled/dismissed prior to Trial

Final Appealable Order: No

Motion Tie Off Information:

1. Motion CMS Document Id: 26CV0004972026-01-2099880000
   Document Title: 01-20-2026-MOTION FOR PRELIMINARY INJUNCTION - PLAINTIFF: CHANNEL ZERO MARKETING LLC
   Disposition: MOTION IS MOOT

2. Motion CMS Document Id: 26CV0004972026-01-2099890000
   Document Title: 01-20-2026-MOTION FOR TEMPORARY RESTRAINING ORDER - PLAINTIFF: CHANNEL ZERO MARKETING LLC
   Disposition: MOTION IS MOOT

ZEIGER, TIGGES & LITTLE LLP

TELEPHONE: (614) 365-9900
FACSIMILE: (614) 365-7900

ATTORNEYS AT LAW
8000 WALTON PARKWAY
SUITE 260
NEW ALBANY, OHIO 43054

WRITER'S DIRECT NUMBER:
(614) 365-4113
LITTLE@LITOHIO.COM

December 16, 2025

Via Email

State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
contact@pharmacy.ohio.gov

Re: Public Records Request

Dear Sir/Madam:

Pursuant to R.C. 149.43, please accept this request for an opportunity to immediately inspect and potentially request copies of the following public records kept by the State of Ohio Board of Pharmacy. For purposes of this request, "Executive Order" refers to Executive Order 20250-08D, a copy of which is attached hereto as Exhibit A.

1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse the public health and safety risk of the foregoing or products containing the same..

2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.

3. The files, maintained in electronic or paper form, containing drafts of the Executive Order.

4. The files, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.

Please keep in mind that the Public Records Act requires that "all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." To that end, we are prepared to have a representative appear at the Ohio Pharmacy Board to inspect the records at the earliest possible time.

Please contact the undersigned, or my assistant, Terri Thompson (614-324-5065), and identify the location and time for inspection of these public records.

To the extent any documents are withheld from inspection, please identify the statutory exceptions invoked for such withholding.

Thank you in advance for your cooperation.

Very truly yours,

Marion H. Little, Jr.

Enclosure

Mhl:tlt:1431-001:1073162

EXHIBIT

A

MIKE DEWINE
GOVERNOR
STATE OF OHIO

Executive Order 2025-08D

The Emergency Adoption of Rule 4729:9-1-01.1 of the Ohio Administrative Code by the Ohio Board of Pharmacy

WHEREAS, kratom is a plant found in southeast Asia that is marketed in Ohio as an opioid alternative, despite having no approved uses[1]; and

WHEREAS, the effects of kratom depend on dose, with low doses having stimulant effects and high doses having opioid-like effects; and

WHEREAS, mitragynine is the primary psychoactive substance naturally found in kratom; and

WHEREAS, mitragynine can be easily altered by chemists to produce dangerous mitragynine-like compounds, such as 7-hydroxymitragynine ("7-OH")[2]; and

WHEREAS, dangerous mitragynine-like compounds, such as 7-OH, bear public health and safety risks as their potency are often significantly greater than that of morphine[3]; and

---

[1] US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec. 10, 2025.

[2] Cayman Chemical. NPS Snapshot: Kratom-Derived Semi-Synthetic Opioids. https://cdn2.caymanchem.com/cdn/cms/caymanchem/LiteratureCMS/NPS%20Snapshot%20Kratom-Derived%20Semi-Synthetic%20Opioids.pdf. Last accessed Dec. 10, 2025; Krotulski, AJ; Denn, MT; Brower, JO; Papsun, DM; Logan, BK. (2025) *Evaluation of Commercially Available Smoke Shop Products Marketed as "7-Hydroxy Mitragynine" & Related Alkaloids*, Center for Forensic Science Research and Education, United States.

[3] Cayman Chemical. NPS Snapshot: Kratom-Derived Semi-Synthetic Opioids. https://cdn2.caymanchem.com/cdn/cms/caymanchem/LiteratureCMS/NPS%20Snapshot%20Kratom-Derived%20Semi-Synthetic%20Opioids.pdf. Last accessed Dec. 10, 2025; Krotulski, AJ; Denn, MT; Brower, JO; Papsun, DM; Logan, BK. (2025) *Evaluation of Commercially Available Smoke Shop Products Marketed as "7-Hydroxy Mitragynine" & Related Alkaloids*, Center for Forensic Science Research and Education, United States; Makary, Marty. "FDA Warns Healthcare Professionals About 7-OH." July 29, 2025. https://www.fda.gov/media/187898/download?attachment. Last accessed Dec. 10, 2025; US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec. 10, 2025.

WHEREAS, adverse effects of products containing dangerous mitragynine-like compounds, such as 7-OH, have prompted the US Food and Drug Administration ("FDA") to suggest that those products are the next wave of the opioid crisis[4]; and

WHEREAS, according to the FDA, "[t]his public health threat is troubling and requires immediate and impactful policies to educate consumers and take regulatory action that limits access to 7-OH containing products."[5]; and

WHEREAS, Section 3719.45 of the Ohio Revised Code authorizes the Ohio Board of Pharmacy ("Board of Pharmacy") to add a previously unscheduled compound, mixture, preparation, or substance to Schedule I by emergency rule if the Board determines the compound has no accepted medical use in treatment in this state and poses an imminent hazard to the public health, safety, or welfare; and

WHEREAS, the Board of Pharmacy found that mitragynine-related compounds have no accepted medical use in treatment in this state, have a high potential for abuse, and pose an imminent hazard to the public health, safety, or welfare; and

WHEREAS, Section 119.03(G) of the Ohio Revised Code authorizes the Governor, on the request of a State agency, to suspend the normal rule making procedures with respect to specific rules when an emergency exists necessitating the immediate adoption, amendment, or rescission of such rules. When such a determination is made, the agency may immediately adopt, amend, or rescind such rules, but the rules are only valid for one hundred and eighty (180) days; and

WHEREAS, the Board of Pharmacy has requested a determination whether an emergency exists that requires 4729:9-1-01.1 on an emergency basis and that would therefore permit the Board of Pharmacy, pursuant to Section 3719.45 of the Ohio Revised Code, to immediately adopt this rule.

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, have determined, upon the request of the Board of Pharmacy, that an emergency exists requiring the immediate adoption of rule 4729:9-1-01.1 of the Ohio Administrative Code.

Further, I hereby order that the procedures prescribed by Section 119.03 of the Ohio Revised Code with respect to the adoption or amendment of the specified rule be suspended and that the Board of Pharmacy be permitted to adopt the rule immediately by filing it electronically with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review ("JCARR").

---

[4] Makary, Marty. "FDA Warns Healthcare Professionals About 7-OH." July 29, 2025. https://www.fda.gov/media/187898/download?attachment. Last accessed Dec. 10, 2025; US Food and Drug Administration. Preventing the Next Wave of the Opioid Epidemic: What You Need to Know About 7-OH. https://www.fda.gov/media/187913/download?attachment. Last accessed Dec. 10, 2025.

[5] US Food and Drug Administration. 7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat. https://www.fda.gov/media/187899/download?attachment. Last accessed Dec. 10, 2025.

Furthermore, I hereby order that this Executive Order be filed in electronic form with the Board of Pharmacy, the Secretary of State, the Director of the Legislative Service Commission, and JCARR.

Nothing in this Executive Order and Emergency Rule shall be construed to apply to natural kratom in vegetation form.

I signed this Executive Order on December 12, 2025, in Columbus, Ohio, and it will expire one hundred and eighty (180) days from the effective date of the emergency rule, or upon the adoption of the rule through the normal JCARR process, whichever is sooner.

Mike DeWine, Governor

ATTEST:

Frank LaRose, Secretary of State

Terri Thompson

From: Sharon.Maerten-Moore@pharmacy.ohio.gov
Sent: Friday, March 20, 2026 10:14 AM
To: Terri Thompson
Cc: Marion H. Little
Subject: FW: Public Records Request [ZTL-ZTLDMS.FID67563]
Attachments: Board of Pharmacy Public Records Request.pdf

The Ohio Board of Pharmacy provides the following responses to your public records request (attached) of December 16, 2025:

1. The files, maintained in electronic or paper form, containing research analysis or reviews conducted by the Ohio Medical Board as to Kratom, mitragynine and/or 7-hydroxymitragynine, including any studies regarding or relating to the adverse [sic] the public health and safety risk of the foregoing or products containing the same.

The Board does not have any documents responsive to this request.

2. The files, maintained in electronic or paper form, containing all communications regarding or relating to the Executive Order.

The Board does not have any documents responsive to this request.

3. The files, mtainined in electronic or paper form, containing drafts of the Executive Order.

Pursuant to Section 149.43(A)(1)(v) of the Ohio Revised Code, documents which constitute attorney-client privileged communications are not public record and have not been provided.

4. The file, maintained in electronic or paper form, containing documents as to any emergency or necessity prompting the Executive Order.

The Board does not have any documents responsive to this request.

Ohio Board of Pharmacy

Sharon Maerten-Moore
Chief Legal Counsel
77 South High Street, 17th Floor
Columbus, OH 43215
O: 614.995.7498 C: 614.296.4412
sharon.maerten-moore@pharmacy.ohio.gov

EXHIBIT D

Follow the Board on social media:

From: Terri Thompson <thompson@litohio.com>
Sent: Tuesday, December 16, 2025 5:29:37 PM
To: Ohio Board of Pharmacy, PRX <contact@pharmacy.ohio.gov>
Cc: Marion H. Little <little@litohio.com>
Subject: Public Records Request [ZTL-ZTLDMS.FID67563]

Terri Thompson
Legal Assistant
Zeiger, Tigges & Little LLP
8000 Walton Parkway, Suite 260
New Albany, OH 43054
(614) 324-5065
Email: thompson@litohio.com

ZEIGER, TIGGES & LITTLE LLP

TELEPHONE: (614) 365-9900
FACSIMILE: (614) 365-7900

ATTORNEYS AT LAW
8000 WALTON PARKWAY
SUITE 260
NEW ALBANY, OHIO 43054

WRITER'S DIRECT NUMBER:
(614) 365-4113
LITTLE@LITOHIO.COM

February 4, 2026

Via Email

State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
contact@pharmacy.ohio.gov

Steven W. Schierholt, Esq.
Executive Director
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
steven.schierholt@pharmacy.ohio.gov

Eric Griffin
Director of Compliance and Enforcement
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Eric.griffin@pharmacy.ohio.gov

Sharon Maerten-Moore
Chief Legal Counsel
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Sharon.Maerten-Moore@pharmacy.ohio.gov

Cameron McNamee
Director of Policy and Communications
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Cameron.mcnamee@pharmacy.ohio.gov

Karrie Southard
Director of Operations
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Karrie.southard@pharmacy.ohio.gov

Jolene DeFiore-Hyrmer
Chief Data Officer
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Jolene.defiore-hyrmer@pharmacy.ohio.gov

Chad Garner
Director of OARRS
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Chad.garner@pharmacy.ohio.gov

Jeff Huston, BPharm, PharmD, R.Ph.
Jason M. George, PharmD
Trina Buettner, R.Ph.
Anthony J. Buchta, Sr., R.Ph.
Mindy Ferris, R.Ph.
Leonard J. Hubert
Tod J. Grimm, R.Ph., MBA
D. Rich Miller III, B.S., R.Ph.
Tom Whiston, R.Ph
c/o State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215

Jenni Wai
Chief Pharmacist
State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
Jenni.wai@pharmacy.ohio.gov

Re: Public Records Request

Dear Sir/Madam:

Pursuant to Section 149.43 of the Ohio Revised Code, we submit the following public records request (the "Public Records Request") to the State of Ohio Board of Pharmacy ("BOP"), its Board Leadership, and Board Members. Requestor is delivering this Public Records Request via electronic mail to the BOP and will issue a written copy to the BOP's offices for delivery to Board Leadership and the Board Members. Please promptly advise if this Public Records Request should be delivered or transmitted via a different means or to a different address or location.

For purposes of this Public Records Request, the following definitions are provided:

(a) "Board Leadership" means individually and collectively Steven W. Schierholt, Esq., Executive Director; Eric Griffin, Director of Compliance and Enforcement; Sharon Maerten-Moore, Chief Legal Counsel; Cameron McNamee, Director of Policy and Communications' Karrie Southard, Director of Operations; Jolene DeFiore-Hyrmer, Chief Data Officer' Chad Garner, Director of OARRS; and Jenni Wai, Chief Pharmacist.

(b) "Board Members" means individually and collectively Jeff Huston, BPharm, PharmD, R.Ph.; Jason M. George, PharmD; Trina Buettner, R.Ph.; Anthony J. Buchta, Sr., R.Ph.; Mindy Ferris, R.Ph.; Leonard J. Hubert; Tod J. Grimm, R.Ph., MBA; D. Rich Miller III, B.S., R.Ph.; Tom Whiston, R.Ph.

(c) "Consent Order" means the consent order attached as Exhibit A hereto.

(d) "Proposed Rule 4729.9-1-01.1" refers to Proposed Rule 4729.9-1-01.1 (Mitragynine-Related Compounds).

(e) "Proposed Rule 4729.9-1-01.2" refers to Proposed Rule 4729.9-1-01.2 (Mitragynine).

(f) "Mitragynine-Related Compounds" shall have the same meaning as that term is utilized in the BOP's February 2, 2026, Resolution.

(g) "Lawsuit" means the action captioned Channel Zero Marketing, LLC, et al. v. Ohio Board of Pharmacy, Franklin County, Ohio Common Pleas Court Case No. 26CV000497.

This Public Records Request requests the opportunity to inspect and copy the following public records:

1. The calendars of the Board Leadership and Board Members for the time period January 1, 2025 to the present.

2. For the time period January 1, 2025 to the present, the BOP files, whether maintained in electronic or paper form, containing any emails or other communications between or among, individually or by group, any of the Board Leadership or Board Members regarding:

    a. Proposed Rule 4729.9-1-01.1;

    b. Proposed Rule 4729.9-1-01.2;

    c. Kratom;

    d. Consent Order;

    e. Lawsuit; and/or

    f. Mitragynine-Related Compounds.

3. For the time period January 1, 2025 to the present, all text messages including, between, or among, individually or by group, any of the Board Leadership or Board Members regarding:

    a. Proposed Rule 4729.9-1-01.1;

    b. Proposed Rule 4729.9-1-01.2;

    c. Kratom;

    d. Consent Order;

    e. Lawsuit; and/or

    f. Mitragynine-Related Compounds.

4. Minutes and draft minutes from BOP's February 2, 2026 Board Meeting.

5. Any audio or video recordings of BOP's February 2, 2026 Board Meeting.

The requested records include those found on personal phones and computers of the Board Members and/or Board Leadership.

Please keep in mind that the Public Records Act requires that "all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." To that end, we are prepared to have a representative appear to inspect the records at the earliest possible time.

Please contact the undersigned, or my assistant, Terri Thompson (614-324-5065), and identify the location and time for inspection of these public records.

To the extent any documents are withheld from inspection, please identify the statutory exceptions invoked for such withholding.

Thank you in advance for your cooperation.

Very truly yours,

Marion H. Little, Jr.

Enclosure

Mhl:tlt:1431-001:1076411v.2

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CHANNEL ZERO MARKETING, LLC, et al.	:	
	:	**Case No. 26 cv 0497**
Plaintiffs,	:	
	:	**Judge McIntosh**
v.	:	
	:	
OHIO BOARD OF PHARMACY,	:	
	:	
Defendant.	:	

FINAL CONSENT JUDGMENT ENTRY

Pursuant to the stipulation and agreement of the parties, Plaintiffs Channel Zero Marketing, LLC and JFL Energy, LLC ("Plaintiffs") and Defendant Ohio Board of Pharmacy ("Defendant"), the Court hereby finds:

BACKGROUND

1. Plaintiffs state that they are distributors, within the state of Ohio, of natural kratom leaf products made with natural, pure-leaf vegetative kratom in its dried and powdered form.

2. Defendant is an agency of the State of Ohio that is statutorily charged, under R.C. 3719.41(A) & (B), with adopting and updating rules, in accordance with Chapter 119 of the Revised Code, "establishing schedule I, schedule II, schedule III, schedule IV, and schedule V [drugs in Ohio] incorporating the five schedules of controlled substances under the federal drug abuse control laws."

3. On December 12, 2025, Governor Mike DeWine issued Executive Order 2024-08D (the "Executive Order"). In the Executive Order, the Governor determined that an emergency exists that permitted Defendant to adopt an emergency rule regarding the scheduling of "m[]itragynine-related compounds." In the Executive Order, Governor DeWine also stated that

EXHIBIT
A

"[n]othing in this Executive Order and Emergency Rule shall be construed to apply to natural kratom in vegetation form."

4. On December 12, 2025, Defendant adopted Ohio Admin. Code § 4729:9-1-01.1 as an emergency rule (the "Emergency Mitragynine-Related Compounds Rule"). The Emergency Mitragynine-Related Compounds Rule classified "[m]itragynine-related compounds" as schedule I controlled substances. The Emergency Mitragynine-Related Compounds Rule also states, in Ohio Admin. Code § 4729:9-1-01.1(A)(4), that "[m]itragynine" is not a "[m]itragynine-related compound[.]"

5. Kratom, even in its vegetation form, contains trace amounts of other mitragynine-related compounds; specifically, 7-hydroxymitragynine ("7-OH"). These trace amounts have not historically been detected by Ohio crime labs under current testing protocols.

6. On December 29, 2025, Defendant issued an updated Consumer and Retailer Notice about the Emergency Mitragynine-Related Compounds Rule (the "Updated Notice"). In the Updated Notice, Defendant included the following question and answer:

> Does the [Emergency Mitragynine-Related Compounds Rule] impact kratom in its natural vegetation state that contains trace amounts of 7-hydroxymitragine (7-OH)? (Updated 12/29/2025)
>
> Kratom that is sold in its natural vegetation state that contains trace amounts of 7-OH is not banned under the emergency rule. The Governor's Executive Order specifically exempts natural kratom in vegetation form. ...

7. On January 20, 2026, Plaintiffs filed this lawsuit seeking a declaratory judgment interpreting the rule as well as injunctive relief barring Defendant from enforcing the Emergency Mitragynine-Related Compounds Rule as against the sale of natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

8. The Emergency Mitragynine-Related Compounds Rule is currently in effect with the same language originally adopted on December 12, 2025. However, Defendant agrees that it did not intend, by way of the Emergency Mitragynine-Related Compounds Rule, to schedule natural kratom and natural kratom leaf products that contain trace amounts of 7-OH or other mitragynine-related compounds.

RELIEF GRANTED

9. In accordance with these stipulations and the parties' agreement, and for good cause shown, the Court ORDERS, ADJUDGES, and DECREES, and hereby enters FINAL JUDGMENT, as follows:

A. Pursuant to Chapter 2721 of the Ohio Revised Code and Rule 57 of the Ohio Rules of Civil Procedure, the Court declares that the Emergency Mitragynine-Related Compounds Rule was not intended to, and does not, schedule or otherwise apply to natural kratom and natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

B. Defendant Ohio Board of Pharmacy is permanently enjoined from taking any steps to enforce or otherwise attempting to enforce, or from directing, acting in concert with, or advising any other entity (including, without limitation law enforcement) to enforce or attempt to enforce the Emergency Mitragynine-Related Compounds Rule as to natural kratom and/or natural kratom leaf products that contain trace amounts of mitragynine-related compounds.

C. This Order does not bar the Defendant or any other party from enforcing the Emergency Mitragynine-Related Compounds Rule as applied to kratom products containing more than trace amounts of 7-OH or other mitragynine-related

compounds, or from exercising any other authority granted pursuant to Chapter 4729, Chapter 3719, or Chapter 3715 of the Ohio Revised Code.

D. This Order applies only to the Emergency Mitragynine-Related Compounds Rule, and does not restrict the Defendant from proposing or adopting any other rule relating to kratom products, mitragynine, or mitragynine-related compounds.

E. Each party shall bear its own attorneys' fees, expenses, and court costs.

F. Each of the undersigned parties, via its respective legal counsel, approves, and irrevocably waives all rights to appeal, this Final Consent Judgment Entry.

G. This is a FINAL JUDGMENT and the case is hereby TERMINATED.

H. The Court hereby retains continuing, exclusive jurisdiction to enforce, and to adjudicate any disputes or issues relating to, this Final Consent Judgment Entry.

IT IS SO ORDERED.

Judge Stephen L. McIntosh

SO STIPULATED:

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
8000 Walton Parkway, Ste. 260
New Albany, Ohio 43054
Telephone: (614) 365-9900
hogan@litohio.com
little@litohio.com

Counsel for Plaintiffs

/s/ *Katherine J. Bockbrader*
DAVE YOST (0056290)
Attorney General of Ohio

Katherine J. Bockbrader (0066472)
Assistant Attorney General

Salvatore Messina (0097510)
Assistant Attorney General

D. Grant Wilson (0100293)
Assistant Attorney General

30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Katherine.bockbrader@ohioago.gov
Salvatore.Messina@ohioago.gov
grant.wilson@ohioago.gov

Counsel for Defendant Ohio Board of Pharmacy

1431-001.1076033

4729:9-1-01.1 **Mitragynine-Related Compounds.**

The following are classified as schedule I controlled substances:

(A) Mitragynine-related compounds, whether synthetic or naturally occurring substances contained in the plant, or in the resinous extractives of mitragyna speciosa (also known as kratom) and/or synthetic substances, derivatives, prodrugs, isomers, esters, ethers, salts and salts of isomers, esters and ethers with similar chemical structure.

Mitragynine-related compounds include, but are not limited to, the following: 7-hydroxymitragynine; mitragynine pseudoindoxyl; dihydro-7-hydroxy mitragynine; and 7-acetoxymitragynine. Mitragynine-related compounds do not include any of the following:

(1) Any dangerous drug that is the subject of an application approved by the United States food and drug administration under subsections 505(c) or (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c) or (j)) (December 12, 2025) for marketing as a dangerous drug;

(2) Any compound used in food consistent with either:

(a) A food additive regulation published in the United States code of federal regulations; or

(b) A "no questions response" issued by the United States food and drug administration in response to a generally recognized as safe notice.

(3) Any drug approved by the United States food and drug administration that may be lawfully sold over the counter without a prescription in accordance with section 505G of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355h) (December 12, 2025).

(4) Mitragynine in vegetation form, including natural kratom leaf and ground natural kratom leaf, in accordance with Chapter 3715. of the Revised Code.

Replaces:	4729:9-1-01.1
Effective:	5/19/2026
Five Year Review (FYR) Dates:	05/19/2031

CERTIFIED ELECTRONICALLY

Certification

05/07/2026

Date

Promulgated Under:	119.03
Statutory Authority:	3719.44
Rule Amplifies:	3719.41, 3719.45, 4729.26, 3719.28
Prior Effective Dates:	12/12/2025 (Emer.)

Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio

Date Issued: 5/14/2026

Date Effective: 5/19/2026

This document replaces all previous guidance issued by the Ohio Board of Pharmacy on the enforcement of OAC 4729:9-1-01.1 and the manufacture, possession, and sale of kratom in Ohio.

DISCLAIMER: *The information contained in this notice does not, and is not intended to, constitute legal advice; instead, all information provided is for general informational purposes only. Information contained in this notice may not constitute the most up-to-date legal or other information. The Ohio Board of Pharmacy is not able to provide any additional guidance beyond what is provided in this notice. For additional questions, readers should contact an attorney to obtain advice with respect to the information provided in this notice.*

EXHIBIT

G

exhibitsticker.com

77 S. High Street, 17th Floor
Columbus, OH 43215 U.S.A.

Phone: 614 | 466 4143
Fax: 614 | 752 4836

988 SUICIDE & CRISIS LIFELINE Ohio

Frequently Asked Questions

Q1) What is Kratom?

Kratom is a tropical tree in the coffee family (mitragyna speciosa) that is native to Southeast Asia. The kratom leaves are the part of the tree that are used and sold either fresh or dried. When dried, the kratom leaves are typically sold in the form of green powder. Dried leaves are also used to make tablets, capsules, extracts and gum as well as other edible products.

Q2) What forms of kratom are legal to sell in Ohio?

The following table provides an overview of what is legal to sell or possess in the state of Ohio:

Form of Kratom	Legal to Sell or Possess?	Legal Citation
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	Yes.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*
Natural kratom (mitragynina speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*

	or represented as any edible product).	
Kratom-related (i.e., mitragynine-related) compounds, including, but not limited, to: ▪ 7-hydroxymitragynine (sometimes referred to as 7-OH); ▪ Mitragynine pseudoindoxyl; ▪ Dihydro-7-hydroxy mitragynine; and ▪ 7-acetoxymitragynine.	No. These compounds are prohibited under OAC 4729:9-1-01.1.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (emergency rule: effective December 12, 2025 / permanent rule: effective May 19, 2026)

IMPORTANT:** OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.). ***Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026. For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

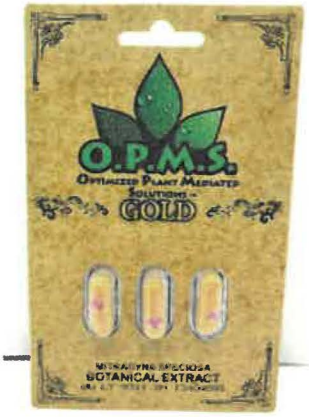
Q3) Does the rule impact kratom in its natural vegetation state that contains trace amounts of 7-hydroxymitragine (7-OH)?

Kratom that is sold in its natural vegetation state that contains trace amounts of 7-OH may still be legally sold in Ohio. The Board's rule specifically exempts natural kratom in vegetation form that is compliant with ORC 3715. Under existing Ohio law and consistent with ODA's legal authority, natural kratom may only be sold in its whole or dried leaf form or powdered form ***as long as*** it is not marketed as a food, drug, or dietary supplement. For example, it cannot be labeled with instructions on how to make it into a tea, nor can it be encapsulated (which would indicate that it is intended to take by mouth).

For more information on the sale of kratom in its whole or dried leaf form or powdered form, see the guidance from the Ohio Department of Agriculture: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

Q4) How do I identify kratom products banned under this rule?

Retailers and consumers should look for any products that do not meet the requirements listed in Q2 of this document. For reference, the following are some examples:

NOT BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Because the FDA does not recognize kratom as a "Generally Recognized As Safe" (GRAS) ingredient, the packaging, labeling, and advertising cannot have any instructions, dosages, nutritional fact panel or other representations that this is edible or can be ingested as a food, drink, or supplement.	
BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.	 

BANNED

Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.

BANNED

Kratom-related (i.e., mitragynine-related) compounds including, but not limited, to:

- 7-hydroxymitragynine (sometimes referred to as 7-OH);
- Mitragynine pseudoindoxyl;
- Dihydro-7-hydroxy mitragynine; and
- 7-acetoxymitragynine.

Q5) Are there any additional requirements for the sale of natural kratom in vegetation form?

Those engaged in the sale of natural kratom in vegetation form are strongly encouraged to contact the Ohio Department of Agriculture's Division of Food Safety (614-728-6250 / foodsafety@agri.ohio.gov) with any questions.

Q6) What do I do if I discover illegal kratom products on my shelves or in my possession?

These products should be disposed of immediately.

REMINDER: OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.).

Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026.

For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

EXHIBIT

H

exhibitsticker.com

KRATOM FACT SHEET

Department of Agriculture

WHAT IS KRATOM?

Kratom is a tropical tree in the coffee family (Mitragyna speciosa) that is native to Southeast Asia. The kratom leaves are the part of the tree that are used and sold either fresh or dried. When dried, the kratom leaves are typically sold in the form of green powder. Dried leaves are also used to make tablets, capsules, extracts and gum as well as other edible products.

According to the US Drug Enforcement Administration, consumption of Kratom leaves produces both stimulant effects (in low doses) and sedative effects (in high doses), and can lead to psychotic symptoms as well as psychological and physiological dependence.

Additionally, FDA reports that Kratom is often used to self-treat conditions such as pain, coughing, diarrhea, anxiety and depression, opioid use disorder, and opioid withdrawal.

IS IT LEGAL TO MANUFACTURE, WAREHOUSE, OR SELL KRATOM IN OHIO?

Currently, the only legal way to manufacture, warehouse, or sell natural Kratom is in its vegetation form (whole or dried leaf form, or in a powdered form). Natural Kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product.)

Examples include (but are not limited to):

- Encapsulated
- If the labeling (including advertisements suggests or directs the consumer to make the product into a food or ingestible product
- If the labeling includes ingestion directions (i.e., dose information) or includes a supplemental or nutritional fact panel

WHY DOES OHIO RESTRICT THE SALE OF NATURAL KRATOM?

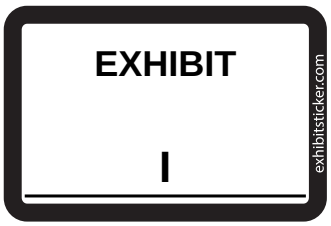
Kratom is not a generally recognized as safe ingredient for food, nor is it an approved drug or dietary supplement, therefore, ODA is following its authority in Ohio Revised Code 3715.55 (adulterated drugs) and 3715.59 (adulterated foods-including dietary supplements) in manufacturing and warehouse facilities. In retail facilities, the local health departments are following their authority in Ohio Administrative Code 3717-1-03.1 (I) (additives – receiving) and 3717-1-03.2 (F)(1) (protection from unapproved additives). Further, this approach to Kratom is in line with the FDA. For more information on FDA's position regarding Kratom, scan the QR code on the right.

For information on kratom-related (non-natural kratom) products and their restrictions, please see the factsheet provided by the Ohio Board of Pharmacy - Kratom: Consumer & Retailer Notice or scan the QR code on the right.

Department of Agriculture
Food Safety

8995 E. Main St.,
Reynoldsburg, OH 43068
foodsafety@agri.ohio.gov • 614 | 728 6250

February 2026



COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

KRAZY DAZE INC., et al.,	:	
	:	Case No. 26 CV 004790
Plaintiffs,	:	
	:	Judge Mark Serrott
v.	:	
	:	
OHIO BOARD OF PHARMACY,	:	
	:	
Defendant.	:	
	:	

MIRACLE KRATOM, LLC, et al.,	:	
	:	
Plaintiffs,	:	Case No. 26 CV 004720
	:	
v.	:	Judge Mark Serrott
	:	
OHIO DEPARTMENT OF AGRICULTURE, et al.,	:	
	:	
Defendants.	:	

ORDER EXTENDING AND MODIFYING <u>TEMPORARY RESTRAINING ORDER</u>

Consistent with the Court's comments at the conclusion of the May 29, 2026, preliminary injunction hearing in Case No. 26 CV 4790, and for good cause shown, the Court indefinitely extends the Temporary Restraining Order issued on May 28, 2026 (the "TRO"), pending further order of the Court. Further, the TRO is hereby modified to include the following, additional paragraph:

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant the Ohio Board of Pharmacy, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this Order, are enjoined from treating and shall not treat as a Schedule I (or other) controlled substance any product that contains, as an

ingredient, vegetative kratom in either leaf or ground up/pulverized leaf form, whether the product is sold in liquid, capsule, or other form and irrespective of whether the product is marketed for ingestion or consumption. This order does not prohibit the Ohio Department of Agriculture from enforcing Ohio Revised Code 3715 et. Seq. as it relates to any of the above substances or products. For the avoidance of doubt, this Order specifically applies to and includes, without limitation, Plaintiff Botanic Tonics, LLC's "Feel Free" line of products.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 06-04-2026

Case Title: KRAZY DAZE INC -VS- OHIO BOARD OF PHARMACY

Case Number: 26CV004790

Type: ORDER

It Is So Ordered.

/s/ Judge Mark A. Serrott

ZEIGER, TIGGES & LITTLE LLP

TELEPHONE: (614) 365-9900
FACSIMILE: (614) 365-7900

ATTORNEYS AT LAW
8000 WALTON PARKWAY
SUITE 260
NEW ALBANY, OHIO 43054

WRITER'S DIRECT NUMBER:
(614) 365-4113
LITTLE@LITOHIO.COM

May 22, 2026

Via Email

State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
contact@pharmacy.ohio.gov

Re: Public Records Request

Dear Sir/Madam:

Pursuant to R.C. 149.43, please accept this request for an opportunity to immediately inspect and potentially request copies of the following public records kept by the State of Ohio Board of Pharmacy.

This Public Records Request requests the opportunity to inspect and copy the following public records:

1. The files, maintained in electronic and/or paper form, containing all drafts and/or revisions of the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio Exhibit issued on May 14, 2026, and attached hereto as Exhibit A.

2. The files, maintained in electronic and/or paper form, containing any email or other communications to and from any person involved in preparing, drafting or offering input regarding or relating to Exhibit A.

3. The files, maintained in electronic and/or paper form, containing communications received from The Ohio Joint Committee on Agency Rule Review, the Ohio General Assembly, and/or any of their respective members regarding Exhibit A and/or the contents thereof.

Please keep in mind that the Public Records Act requires that "all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." To that end, we are prepared to have a representative appear to inspect the records at the earliest possible time.

Please contact the undersigned, or my assistant, Terri Thompson (614-324-5065), and identify the location and time for inspection of these public records.

To the extent any documents are withheld from inspection, please identify the statutory exceptions invoked for such withholding.

Thank you in advance for your cooperation.

Very truly yours,

Marion H. Little, Jr.

Enclosure

cc: Henry G. Appel, Esq. (henry.appel@ohioago.gov)
G. Daniel Wilson, Esq. (grant.wilson@ohioago.gov)

Mhl:tlt:1431-001:1086714

Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio

Date Issued: 5/14/2026

Date Effective: 5/19/2026

This document replaces all previous guidance issued by the Ohio Board of Pharmacy on the enforcement of OAC 4729:9-1-01.1 and the manufacture, possession, and sale of kratom in Ohio.

DISCLAIMER: *The information contained in this notice does not, and is not intended to, constitute legal advice; instead, all information provided is for general informational purposes only. Information contained in this notice may not constitute the most up-to-date legal or other information. The Ohio Board of Pharmacy is not able to provide any additional guidance beyond what is provided in this notice. For additional questions, readers should contact an attorney to obtain advice with respect to the information provided in this notice.*

EXHIBIT

A

77 S. High Street, 17th Floor
Columbus, OH 43215 U.S.A.

Phone: 614 | 466 4143
Fax: 614 | 752 4836

988 SUICIDE & CRISIS LIFELINE Ohio

Frequently Asked Questions

Q1) What is Kratom?

Kratom is a tropical tree in the coffee family (mitragyna speciosa) that is native to Southeast Asia. The kratom leaves are the part of the tree that are used and sold either fresh or dried. When dried, the kratom leaves are typically sold in the form of green powder. Dried leaves are also used to make tablets, capsules, extracts and gum as well as other edible products.

Q2) What forms of kratom are legal to sell in Ohio?

The following table provides an overview of what is legal to sell or possess in the state of Ohio:

Form of Kratom	Legal to Sell or Possess?	Legal Citation
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	Yes.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*
Natural kratom (mitragynina speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*

	or represented as any edible product).	
Kratom-related (i.e., mitragynine-related) compounds, including, but not limited, to: ▪ 7-hydroxymitragynine (sometimes referred to as 7-OH); ▪ Mitragynine pseudoindoxyl; ▪ Dihydro-7-hydroxy mitragynine; and ▪ 7-acetoxymitragynine.	No. These compounds are prohibited under OAC 4729:9-1-01.1.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (emergency rule: effective December 12, 2025 / permanent rule: effective May 19, 2026)

IMPORTANT:** OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.). ***Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026. For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

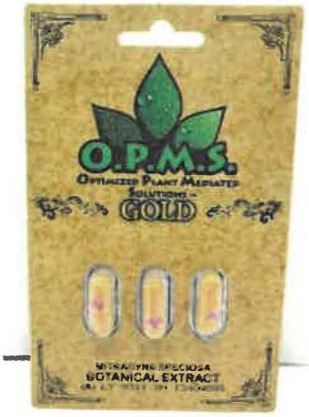
Q3) Does the rule impact kratom in its natural vegetation state that contains trace amounts of 7-hydroxymitragine (7-OH)?

Kratom that is sold in its natural vegetation state that contains trace amounts of 7-OH may still be legally sold in Ohio. The Board's rule specifically exempts natural kratom in vegetation form that is compliant with ORC 3715. Under existing Ohio law and consistent with ODA's legal authority, natural kratom may only be sold in its whole or dried leaf form or powdered form ***as long as*** it is not marketed as a food, drug, or dietary supplement. For example, it cannot be labeled with instructions on how to make it into a tea, nor can it be encapsulated (which would indicate that it is intended to take by mouth).

For more information on the sale of kratom in its whole or dried leaf form or powdered form, see the guidance from the Ohio Department of Agriculture: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

Q4) How do I identify kratom products banned under this rule?

Retailers and consumers should look for any products that do not meet the requirements listed in Q2 of this document. For reference, the following are some examples:

NOT BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Because the FDA does not recognize kratom as a "Generally Recognized As Safe" (GRAS) ingredient, the packaging, labeling, and advertising cannot have any instructions, dosages, nutritional fact panel or other representations that this is edible or can be ingested as a food, drink, or supplement.	
BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.	 

BANNED

Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.

BANNED

Kratom-related (i.e., mitragynine-related) compounds including, but not limited, to:

- 7-hydroxymitragynine (sometimes referred to as 7-OH);
- Mitragynine pseudoindoxyl;
- Dihydro-7-hydroxy mitragynine; and
- 7-acetoxymitragynine.

Q5) Are there any additional requirements for the sale of natural kratom in vegetation form?

Those engaged in the sale of natural kratom in vegetation form are strongly encouraged to contact the Ohio Department of Agriculture's Division of Food Safety (614-728-6250 / foodsafety@agri.ohio.gov) with any questions.

Q6) What do I do if I discover illegal kratom products on my shelves or in my possession?

These products should be disposed of immediately.

REMINDER: OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.).

Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026.

For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

ZEIGER, TIGGES & LITTLE LLP

TELEPHONE: (614) 365-9900
FACSIMILE: (614) 365-7900

ATTORNEYS AT LAW
8000 WALTON PARKWAY
SUITE 260
NEW ALBANY, OHIO 43054

WRITER'S DIRECT NUMBER:
(614) 365-4113
LITTLE@LITOHIO.COM

May 26, 2026

Via Email

State of Ohio Board of Pharmacy
77 S. High Street, 17th Floor
Columbus, OH 43215
contact@pharmacy.ohio.gov

Re: Public Records Request

Dear Sir/Madam:

Pursuant to R.C. 149.43, please accept this request for an opportunity to immediately inspect and potentially request copies of the following public records kept by the State of Ohio Board of Pharmacy.

This Public Records Request requests the opportunity to inspect and copy the following public records:

1. The files, maintained in electronic and/or paper form, containing any email or other communications to and from the Ohio Department of Agriculture regarding or relating to (a) the Ohio Board of Pharmacy – Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio issued on May 14, 2026, and attached hereto as Exhibit A; (b) the "Kratom Fact Sheet" (including any prior versions of the same) which is attached as Exhibit B; and/or (c) Rule 4729:9-1001.1, including the enforcement or non-enforcement of the same.

Please keep in mind that the Public Records Act requires that "all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." To that end, we are prepared to have a representative appear to inspect the records at the earliest possible time.

Please contact the undersigned, or my assistant, Terri Thompson (614-324-5065), and identify the location and time for inspection of these public records.

To the extent any documents are withheld from inspection, please identify the statutory exceptions invoked for such withholding.

Thank you in advance for your cooperation.

Very truly yours,

Marion H. Little, Jr.

Enclosure

cc: Henry G. Appel, Esq. (henry.appel@ohioago.gov)
G. Daniel Wilson, Esq. (grant.wilson@ohioago.gov)

Mhl:tlt:1431-001:1086826

Consumer and Retailer Notice: Sale and Possession of Kratom in Ohio

Date Issued: 5/14/2026

Date Effective: 5/19/2026

This document replaces all previous guidance issued by the Ohio Board of Pharmacy on the enforcement of OAC 4729:9-1-01.1 and the manufacture, possession, and sale of kratom in Ohio.

DISCLAIMER: *The information contained in this notice does not, and is not intended to, constitute legal advice; instead, all information provided is for general informational purposes only. Information contained in this notice may not constitute the most up-to-date legal or other information. The Ohio Board of Pharmacy is not able to provide any additional guidance beyond what is provided in this notice. For additional questions, readers should contact an attorney to obtain advice with respect to the information provided in this notice.*

EXHIBIT

A

77 S. High Street, 17th Floor
Columbus, OH 43215 U.S.A.

Phone: 614 | 466 4143
Fax: 614 | 752 4836

988 SUICIDE & CRISIS LIFELINE Ohio

Frequently Asked Questions

Q1) What is Kratom?

Kratom is a tropical tree in the coffee family (mitragyna speciosa) that is native to Southeast Asia. The kratom leaves are the part of the tree that are used and sold either fresh or dried. When dried, the kratom leaves are typically sold in the form of green powder. Dried leaves are also used to make tablets, capsules, extracts and gum as well as other edible products.

Q2) What forms of kratom are legal to sell in Ohio?

The following table provides an overview of what is legal to sell or possess in the state of Ohio:

Form of Kratom	Legal to Sell or Possess?	Legal Citation
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	Yes.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)
Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product).	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*
Natural kratom (mitragynina speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.*	No. Natural kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (effective May 19, 2026)*

	or represented as any edible product).	
Kratom-related (i.e., mitragynine-related) compounds, including, but not limited, to: ▪ 7-hydroxymitragynine (sometimes referred to as 7-OH); ▪ Mitragynine pseudoindoxyl; ▪ Dihydro-7-hydroxy mitragynine; and ▪ 7-acetoxymitragynine.	No. These compounds are prohibited under OAC 4729:9-1-01.1.	ORC 3715.55, 3715.59 OAC 4729:9-1-01.1 (emergency rule: effective December 12, 2025 / permanent rule: effective May 19, 2026)

IMPORTANT:** OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.). ***Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026. For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

Q3) Does the rule impact kratom in its natural vegetation state that contains trace amounts of 7-hydroxymitragine (7-OH)?

Kratom that is sold in its natural vegetation state that contains trace amounts of 7-OH may still be legally sold in Ohio. The Board's rule specifically exempts natural kratom in vegetation form that is compliant with ORC 3715. Under existing Ohio law and consistent with ODA's legal authority, natural kratom may only be sold in its whole or dried leaf form or powdered form ***as long as*** it is not marketed as a food, drug, or dietary supplement. For example, it cannot be labeled with instructions on how to make it into a tea, nor can it be encapsulated (which would indicate that it is intended to take by mouth).

For more information on the sale of kratom in its whole or dried leaf form or powdered form, see the guidance from the Ohio Department of Agriculture: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

Q4) How do I identify kratom products banned under this rule?

Retailers and consumers should look for any products that do not meet the requirements listed in Q2 of this document. For reference, the following are some examples:

NOT BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered). Because the FDA does not recognize kratom as a "Generally Recognized As Safe" (GRAS) ingredient, the packaging, labeling, and advertising cannot have any instructions, dosages, nutritional fact panel or other representations that this is edible or can be ingested as a food, drink, or supplement.	
BANNED Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in capsule form.	 

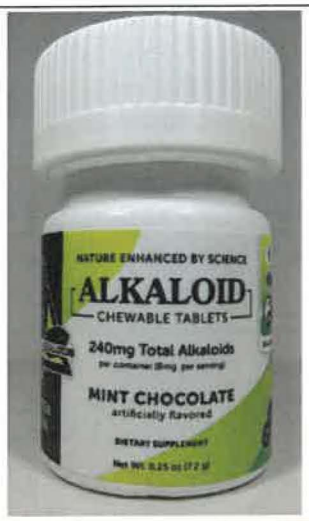
BANNED

Natural kratom (mitragyna speciosa or mitragynine) in its vegetation form (e.g., dried leaf or powdered) in liquid or drink form.

BANNED

Kratom-related (i.e., mitragynine-related) compounds including, but not limited, to:

- 7-hydroxymitragynine (sometimes referred to as 7-OH);
- Mitragynine pseudoindoxyl;
- Dihydro-7-hydroxy mitragynine; and
- 7-acetoxymitragynine.



Q5) Are there any additional requirements for the sale of natural kratom in vegetation form?

Those engaged in the sale of natural kratom in vegetation form are strongly encouraged to contact the Ohio Department of Agriculture's Division of Food Safety (614-728-6250 / foodsafety@agri.ohio.gov) with any questions.

Q6) What do I do if I discover illegal kratom products on my shelves or in my possession?

These products should be disposed of immediately.

REMINDER: OAC 4729:9-1-01.1 exempts mitragynine (kratom) in vegetation form, including natural kratom leaf and ground natural kratom leaf, produced and sold in accordance with Ohio's food safety laws (ORC 3715.).

Products that are not vegetation and that do not comply with ORC 3715. are Schedule I controlled substances effective May 19, 2026.

For more information on kratom products and compliance with Ohio's food safety laws, visit: https://agri.ohio.gov/divisions/food-safety/resources/Kratom.

EXHIBIT

B

KRATOM FACT SHEET

Department of Agriculture

WHAT IS KRATOM?

Kratom is a tropical tree in the coffee family (Mitragyna speciosa) that is native to Southeast Asia. The kratom leaves are the part of the tree that are used and sold either fresh or dried. When dried, the kratom leaves are typically sold in the form of green powder. Dried leaves are also used to make tablets, capsules, extracts and gum as well as other edible products.

According to the US Drug Enforcement Administration, consumption of Kratom leaves produces both stimulant effects (in low doses) and sedative effects (in high doses), and can lead to psychotic symptoms as well as psychological and physiological dependence.

Additionally, FDA reports that Kratom is often used to self-treat conditions such as pain, coughing, diarrhea, anxiety and depression, opioid use disorder, and opioid withdrawal.

IS IT LEGAL TO MANUFACTURE, WAREHOUSE, OR SELL KRATOM IN OHIO?

Currently, the only legal way to manufacture, warehouse, or sell natural Kratom is in its vegetation form (whole or dried leaf form, or in a powdered form). Natural Kratom is not permitted to be processed into, or marketed as, a food, drug, or dietary supplement (e.g., incorporated into a food or represented as any edible product.)

Examples include (but are not limited to):

- Encapsulated
- If the labeling (including advertisements suggests or directs the consumer to make the product into a food or ingestible product
- If the labeling includes ingestion directions (i.e., dose information) or includes a supplemental or nutritional fact panel

WHY DOES OHIO RESTRICT THE SALE OF NATURAL KRATOM?

Kratom is not a generally recognized as safe ingredient for food, nor is it an approved drug or dietary supplement, therefore, ODA is following its authority in Ohio Revised Code 3715.55 (adulterated drugs) and 3715.59 (adulterated foods-including dietary supplements) in manufacturing and warehouse facilities. In retail facilities, the local health departments are following their authority in Ohio Administrative Code 3717-1-03.1 (I) (additives – receiving) and 3717-1-03.2 (F)(1) (protection from unapproved additives). Further, this approach to Kratom is in line with the FDA. For more information on FDA's position regarding Kratom, scan the QR code on the right.

For information on kratom-related (non-natural kratom) products and their restrictions, please see the factsheet provided by the Ohio Board of Pharmacy - Kratom: Consumer & Retailer Notice or scan the QR code on the right.

Department of Agriculture
Food Safety

8995 E. Main St.,
Reynoldsburg, OH 43068
foodsafety@agri.ohio.gov • 614 | 728 6250

February 2026