Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board
77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

Governor
Ted Strickland
Executive Director
Jeffrey M. Rosa

Before The Ohio
Occupational Therapy, Physical Therapy, and Athletic Trainers Board

Physical Therapy Section

Melisa N. Smith
P.O. Box 33
Delphos, Ohio 45833

IN RE:
The eligibility of Melisa N. Smith, PT011143 to retain her license as a Physical Therapist in the State of Ohio

Case No: PT FY09-045

Issue Date: March 16, 2009

Notice of Opportunity for a Hearing

Introduction and Jurisdiction

Section 4755.47(A) of the Ohio Revised Code authorizes the Board to refuse to grant a license to an applicant for an initial or renewed license as a physical therapist or physical therapist assistant or, by an affirmative vote of not less than five members, may limit, suspend or revoke the license of a physical therapist or physical therapist assistant or reprimand, fine or place a license holder on probation, on any of the following grounds:

> (6) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate sections 4755.40 to 4755.56 of the Revised Code or any order issued or rule adopted under those sections;
>
> (22) Failure to complete continuing education requirements as prescribed in section 4755.51 or 4755.511 of the Revised Code or to satisfy any rules applicable to continuing education requirements that are adopted by the physical therapy section;

In accordance with Chapter 119 and section 4755.47 of the Ohio Revised Code, you are hereby notified that the Physical Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (hereinafter, "Board") intends to determine whether or not to limit, suspend or revoke your physical therapist license, or reprimand, fine or place you on probation for one or more of the following reasons:

OTPTAT BD 03/25/09 AM

Count 1

On February 18, 2009, **Smith** submitted verification of continuing education credits earned for the renewal period of January 1, 2007 through January 31, 2009, as a result of being randomly selected by the Board for a an audit for continuing education hours. A review of the information submitted revealed that **Smith** accounted for 12 of the 24 hours of continuing education required for her 2009 license renewal. Said conduct constitutes a violation of Ohio Revised Code sections 4755.47(A)(6) & (22) and 4755.51, and Ohio Administrative Code rule 4755-23-08.

Ohio Revised Code section 4755.51 states in pertinent part:

Except in the case of a first license renewal, a physical therapist is eligible for renewal of the physical therapist's license only if the physical therapist has completed twenty-four units of continuing education in one or more courses, activities, or programs approved by the physical therapy section of the Ohio occupational therapy, physical therapy, and athletic trainers board.

On request of the physical therapy section, an applicant for license renewal shall submit evidence satisfactory to the section of completion of the required continuing physical therapy education.

Ohio Administrative Code rule 4755-23-08 states in pertinent part:

Pursuant to sections 4755.51 and 4755.511 of the Revised Code, no person shall qualify for license renewal as a physical therapist or physical therapist assistant unless the individual completed the required continuing education units (CEU's) outlined in paragraph (A) of this rule. A "unit" is one clock hour spent in a continuing education activity meeting the requirements established in section 4755.52 of the Revised Code.

(A) Physical therapists and physical therapist assistants shall participate in continuing education activities that meet the requirements outlined in division (B) of section 4755.52 of the Revised Code

(1) A physical therapist must complete twenty-four units of continuing education activities within the two year renewal cycle.

(2) A physical therapist assistant must complete twelve units of continuing education activities within the two year renewal cycle.

(B) Accumulated CEU's may not be carried over from one renewal period to another.

(C) P ursuant to sections 4755.52 and 4755.53 of the Revised Code, the physical therapy section may contract with the Ohio physical therapy association (OPTA) to assist the section with the performing of its continuing education duties. The OPTA shall accept, review, approve, or deny proposals for professional workshops, seminars, and/or conferences for continuing education units or for other continuing education activities reported by physical therapists and physical therapist assistants who qualify under section 4755.53 of the Revised Code. The OPTA shall perform any other duties agreed upon by the section and the OPTA necessary for the approval, maintenance, and/or reporting of continuing education activities for

physical therapist and physical therapist assistants.

(D) A license shall not be renewed unless the licensee meets the requirements of paragraph (A) of this rule. Completed continuing education activities shall have a current Ohio approval number.

(E) The physical therapy section shall conduct an audit of the continuing education records of a number of the licensees to be determined by the section each renewal year. The section will notify licensees who are selected for the audit to determine compliance with the continuing education requirement specified in this rule.

(1) Licensees chosen for the audit shall submit to the board by the date specified by the board copies of all records and documentation of proof of completion of the continuing education activities used to meet the continuing education requirements of this rule.

(2) Failure to provide proof of the required number of continuing education hours for the specified time period will result in the commencement of disciplinary action.

(3) Failure to respond to or acknowledge receipt of an audit notice will result in the commencement of disciplinary action.

(F) A physical therapist or physical therapist assistant license shall not be renewed unless the licensee certifies that the individual completed the required number of continuing education hour specified in paragraph (A) of this rule.

A licensee who falsifies a renewal application may be disciplined by the physical therapy section for violating section 4755.48 of the Revised Code.

Hearing Procedures

Pursuant to section 119.07 of the Ohio Revised Code, you have the right to request a hearing on these charges, if your written request for a hearing is received by the Board office, located at 77 South High Street, 16th Floor, Columbus, OH 43215, within thirty (30) days of the mailing of this Notice. Further, you are advised that you are entitled to appear at such hearing in person, or by an attorney, or by such other representative who is permitted to practice before the agency. At the hearing, you may present evidence and examine witnesses appearing for or against you. Also, In lieu of personally appearing, you may present your positions, arguments or contentions in writing.

If you do not timely request such a hearing, the Board, upon consideration of the charges cited, may, in your absence, take such disciplinary action it deems appropriate. This action may include, but is not limited to, suspension or revocation of your license.

Please be advised that under section 4755.031 of the Ohio Revised Code, a person sanctioned under section 4755.11, 4755.47, 4755.482, or 4755.64 of the Revised Code shall pay a fee in the amount of the actual cost of the administrative hearing including the cost of the court reporter, the hearing officer, transcripts, and any witness fees for lodging and travel, as determined by the appropriate section of the board. The fee shall be collected by the appropriate section.

By Order of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board:
Physical Therapy Section

Jeffrey M. Rosa
Executive Director

cc: Yvonne Tertel, Principal Assistant Attorney General

Certified Mail: 7004 2510 0006 9811 2918
Return Receipt Requested

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IN RE:
The eligibility of Melisa N. Smith PT011143, to retain her license as a Physical Therapist in the State of Ohio

Case No: PT FY09-045

Consent Agreement

This Consent Agreement ("Agreement") is entered into by and between **Melisa N. Smith**, ("**Smith**") and the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, Physical Therapy Section ("Board").

The Board is a state agency, charged with enforcing relevant provisions of Ohio Revised Code Chapter 4755 and all rules promulgated thereunder. **Smith** hereby enters into this agreement being fully informed of her rights pursuant to Chapter 4755 and Chapter 119 of the Ohio Revised Code, including the right to representation by counsel and an adjudication hearing.

In consideration of the forgoing and mutual promises hereinafter set forth, **Smith** and the Board hereby agree as follows:

Jurisdiction and Predicate Facts

1. The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, Physical Therapy Section, is empowered by section 4755.47 of the Ohio Revised Code to refuse to grant a license to an applicant for an initial or renewed license as a physical therapist or physical therapist assistant or, by an affirmative vote of not less than five members, may limit, suspend or revoke the license of a physical therapist or physical therapist assistant or reprimand, fine or place a license holder on probation, on any of the following grounds:

   (6) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate sections 4755.40 to 4755.56 of the Revised Code or any order issued or rule adopted under those sections;

   (22) Failure to complete continuing education requirements as prescribed in section 4755.51 or 4755.511 of the Revised Code or to satisfy any rules applicable to continuing education requirements that are adopted by the

physical therapy section;

2. On February 18, 2009, **Smith** submitted verification of continuing education credits earned for the renewal period of January 1, 2007 through January 31, 2009, as a result of being randomly selected by the Board for a an audit for continuing education hours. A review of the information submitted revealed that **Smith** accounted for 12 of the 24 hours of continuing education required for her 2009 license renewal. Said conduct constitutes a violation of Ohio Revised Code sections 4755.47(A)(6) & (22) and 4755.51, and Ohio Administrative Code rule 4755-23-08.

3. **Smith** currently holds a license to practice as a physical therapist in the State of Ohio, and is subject to all laws and rules of Ohio regulating the practice of physical therapy.

Admissions

1. **Smith** hereby admits and acknowledges that she has received proper notice of her right to a formal hearing pursuant to Ohio Revised Code Chapter 119.

2. **Smith** hereby knowingly waives all rights to a formal hearing in this matter, and agrees that this Consent Agreement shall have the full force and effect of an Order duly entered in accordance with those procedures set forth in Ohio Revised Code Chapter 119 and Chapter 4755 relating to administrative proceedings.

3. **Smith** admits that the facts set forth above are true and accurate and expressly waives all rights to challenge said facts.

4. **Smith** admits that the facts set forth above constitute a violation of Ohio law thereby subjecting her t o disciplinary action by the Board pursuant to section 4755.47 of the Ohio Revised Code.

Terms

WHEREFORE, in consideration of the foregoing, and in lieu of any further disciplinary action, **Smith** and the Board, knowingly and voluntarily agree to the following terms:

1. **Smith** agrees that this Agreement serves as a written reprimand.

2. **Smith** shall pay a fine of $50.00 per continuing education hour deficient for the January 1, 2007 through January 31, 2009 renewal period, for a total of **$600.00**. This fine shall be paid within sixty (60) days of the effective date of the agreement. Acceptable forms of payment include cashier's check, business check, or money order. Payments should be made payable to "Treasurer, State of Ohio."

3. **Smith** shall satisfactorily complete 12 hours of continuing education for the January 1, 2007 through January 31, 2009 renewal period within (30) days of the ratification of this agreement. Verification of completion must be submitted to the attention of the Enforcement Division of the Board no later than (45) days after the ratification of this agreement. Hours earned for this term shall not be counted toward the 12 hours required for the February 1, 2009 through January 31, 2010 renewal period.

   This term is considered complete based on the submission of 12 hours of continuing education, which was received by the Board on February 24, 2009.

4. **Smith** shall write a personal plan of action, suitable for distribution at the discretion of the Board, which explains how she will ensure that she obtains the required number of continuing education hours in the future and describes a system to monitor hours as they are completed. **Smith** shall submit her personal plan of action to the attention of the Enforcement Division of the Board no later than 45 days after the ratification of this agreement.

5. **Smith** shall submit quarterly progress updates of her continuing education activities to the attention of the Enforcement Division of the Board. The report shall include: name of courses completed, Ohio approval numbers and number of hours earned or a copy of the certificate(s) of completion which includes the above listed information. A report must be submitted even if no continuing activities have been completed since the prior reporting period. **Smith's** first quarterly report must be received 3 months after the date of the ratification of this agreement. Subsequent reports must be submitted every 3 months.

6. **Smith** agrees to be audited for continuing education credits for the 2010 renewal cycle. Upon receiving the audit notice, **Smith** shall submit certificates of completion to the board office within the specified timeframe.

7. **Smith** shall provide a copy of the consent agreement to any current and future employers during the term of this agreement. **Smith's** employer(s) must send written notification on company letter head to the Enforcement Division indicating that they were provided with a copy of this agreement. **Smith** shall ensure that this notification by her employer is received within (30) days of the effective date of this agreement. If **Smith** changes employers during the course of this agreement, she shall ensure that written notification by her new employer(s) is received within (30) days of her start date.

8. Failure to abide by the terms of this Agreement shall constitute an actionable violation in and of itself without further proof and may subject **Smith** to any and all disciplinary remedies to the Physical Therapy Section including, but not limited to, revocation.

9. **Smith** agrees to abide by all federal, state, and local laws, and all laws and rules governing the practice of physical therapy in the State of Ohio.

10. **Smith** hereby releases the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, its members, employees, agents and officers jointly and severally from any and all liability from the within matter.

11. All parties to this agreement understand that this document is a public record pursuant to Ohio Revised Code section 149.43.

12. All parties to this agreement understand that this information will be sent to the Federal Department of Health and Human Services' Healthcare Integrity and Protection Data Bank (HIPDB), pursuant to 42 U.S.C. §1320a-7e(b), 5 U.S.C. §5525a, and 45 C.F.R. pt. 61.

13. By her signature on this consent agreement, **Smith** agrees that in the event the Board, in its discretion, does not approve this consent agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. **Smith** agrees that should the Board reject this consent agreement and if this case proceeds to hearing, she will assert no claim that the Board was prejudiced by its review and discussion of this consent agreement or of any information relating thereto.

14. By adopting and executing this consent agreement, the Board hereby acknowledges that this consent agreement is a full and final settlement of the within matter and agrees that it will not pursue further action against **Smith** resulting from the aforementioned conduct.

15. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.

By her signature **Smith** acknowledges that she has carefully read the above Agreement and enters into it freely and voluntarily with full knowledge of its force and effect, and full knowledge of her rights under Ohio law. By executing this Agreement, **Smith** recognizes that if, in the discretion of the Board it appears that she has breached any terms or conditions of this Agreement, the Board may initiate formal disciplinary proceedings which may be based solely upon a breach of the Agreement. If the Board finds a breach of this Agreement, it may impose any disciplinary remedy available under Ohio law.

The terms and conditions of this agreement shall not become effective until approved by the Board and executed pursuant to its approval.

Melisa N. Smith

3-21-09
DATE

Counsel to Melisa N. Smith
(If represented)

DATE

Jeffrey M. Rosa
Executive Director

5-7-09
DATE

Yvonne Tertel
Principal Assistant Attorney General

5/7/2009
DATE