

Ohio Occupational Therapy, Physical Therapy and Athletic Trainers Board

Governor
Bob Taft
Executive Director
Jeffrey M. Rosa

OTPTAT BD 03/10/04 PM

**BEFORE THE OHIO
OCCUPATIONAL THERAPY, PHYSICAL THERAPY,
AND ATHLETIC TRAINERS BOARD
PHYSICAL THERAPY SECTION**

IN RE:

The Eligibility of Sean A. Kimmey :
To Have His License Reinstated : Case No: 04-012 PT
as a Physical Therapist Assistant :
in the State of Ohio : Issue Date: February 27, 2003

NOTICE OF OPPORTUNITY FOR A HEARING

INTRODUCTION AND JURISDICTION

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 reinstate your physical therapist assistant license for one or more of the following reasons:

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, on any of the following grounds:

- (6) Violation of section 4755.40 to 4755.56 of the Ohio Revised Code, or any order issued or rule adopted under those sections;

COUNT 1

From on or about February 2, 2004 through on or about February 13, 2004, you utilized the credentials "PTA" and engaged in the practice of physical therapy, as that term is defined in section 4755.40(A) of the Ohio Revised Code, as an employee of Sundance Rehabilitation Corporation, 300 Northpointe Circle, Suite 302, Seven Fields, PA, 16046, without a valid license. Said conduct constitutes a violation of Ohio Revised Code sections 4755.48(B) and (C).

Section 4755.48 (B) of the Ohio Revised Code states:

No person shall practice or in any way claim to the public to be able to practice physical therapy, including practice as a physical therapist assistant, unless the person holds a valid license under sections 4755.40 to 4755.56 of the Ohio Revised Code or except as provided in section 4755.56 of the Ohio Revised Code.

Furthermore, section 4755.48 (C) of the Ohio Revised Code states:

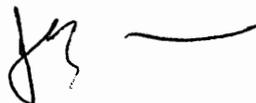
No person shall use the words or letters, physical therapist, physical therapy, physiotherapist, licensed physical therapist, P.T., Ph.T., P.T.T., R.P.T., L.P.T., physical therapy assistant, physical therapist assistant, physical therapy technician, licensed physical therapist assistant, L.P.T.A., R.P.T.A., or any other letters, words, abbreviations, or insignia, indicating or implying that the person is a physical therapist or physical therapist assistant without a valid license under sections 4755.40 to 4755.56 of the Ohio 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 within thirty (30) days of the mailing of this Notice. 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.

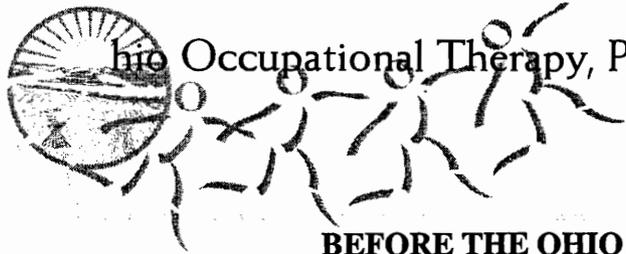
Further, you are advised that you are entitled to appear at such hearing in person, or by an attorney, or you may present your positions, arguments or contentions in writing. At the hearing, if so requested, you may present evidence and examine witnesses appearing for or against you.

**BY ORDER OF THE OCCUPATIONAL THERAPY, PHYSICAL THERAPY,
AND ATHLETIC TRAINERS BOARD - PHYSICAL THERAPY SECTION**



Jeffrey M. Rosa, Executive Director
Ohio Occupational Therapy, Physical Therapy,
and Athletic Trainers Board
Physical Therapy Section

cc: Steven McGann, Assistant Attorney General
Enclosure



**BEFORE THE OHIO OCCUPATIONAL THERAPY,
PHYSICAL THERAPY AND ATHLETIC TRAINERS BOARD
PHYSICAL THERAPY SECTION**

IN RE:

The Eligibility of Sean A. Kimmey :
To Have Her License Reinstated : Case No: 04-012 PT
as a Physical Therapist Assistant :
in the State of Ohio :

CONSENT AGREEMENT

This Consent Agreement ("Agreement") is entered into by and between SEAN A. KIMMEY, ("Kimmey") 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. Kimmey has applied to reinstate his license as a physical therapist assistant in the State of Ohio and is therefore subject to the jurisdiction of the Board. Kimmey hereby enters into this agreement being fully informed of his rights, including those under Chapter 4755 and Chapter 119, Ohio Revised Code, including the right to representation by counsel. By entering into this agreement, Kimmey knowingly and voluntarily waives any rights he may have in order to bring this issue to a mutually satisfactory conclusion and to avoid litigation and expense to all parties.

In consideration of the forgoing and mutual promises hereinafter set forth, Kimmey 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 assistant for any applicant that the Board determines has violated sections 4755.40 to 4755.56 of the Ohio Revised Code or any order or rule adopted thereunder.
2. Kimmey has been licensed as a physical therapist assistant in the State of Ohio from October 7, 1999 until January 31, 2004 when his licensed expired by operation of law for failure to timely submit an application for renewal.

3. Kimmey 's application to reinstate his license as a physical therapist assistant in the State of Ohio was received by the board office on February 18, 2004.
4. From on or about February 2, 2004 through on or about and February 13, 2004, Kimmey utilized the credentials "PTA" and engaged in the practice of physical therapy, as that term is defined in section 4755.40(A) of the Ohio Revised Code, as an employee of Sundance Rehabilitation Corporation, 300 Northpointe Circle, Suite 302, Seven Fields, Pennsylvania, 16046, despite the fact that his license expired on January 31, 2004.
5. Ohio Revised Code section 4755.47(A) provides:

In accordance with Chapter 119. of the Ohio Revised Code, the physical therapy section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board may refuse to grant a license to an applicant for an initial or renewed license as a physical therapist or physical therapist assistant or, by vote of at least five members, may suspend or revoke the license of a physical therapist or physical therapist assistant or reprimand or place a license holder on probation, on any of the following grounds:

(6) Violation of section 4755.40 to 4755.56 of the Ohio Revised Code, or any order issued or rule adopted under those sections;

6. Ohio Revised Code section 4755.48(B) provides:

No person shall practice or in any way claim to the public to be able to practice physical therapy, including practice as a physical therapist assistant, unless the person holds a valid license under sections 4755.40 to 4755.56 of the Ohio Revised Code or except as provided in section 4755.56 of the Ohio Revised Code.

7. Ohio Revised Code section 4755.48(C) provides:

No person shall use the words or letters, physical therapist, physical therapy, physiotherapist, licensed physical therapist, P.T., Ph.T., P.T.T., R.P.T., L.P.T., physical therapy assistant, physical therapist, physical therapy technician, licensed physical therapist assistant, L.P.T.A., R.P.T.A., or any other letters, words, abbreviations, or insignia, indicating or implying that the person is a physical therapist or physical therapist assistant without a valid license under sections 4755.40 to 4755.56 of the Ohio Revised Code.

ADMISSIONS

1. Kimmey hereby admits and acknowledges that he has received proper notice of his right to a formal hearing pursuant to Ohio Revised Code Chapter 119.
2. Kimmey 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. Kimmey admits that the facts as set forth above are true and accurate and expressly waives all rights to challenge said facts.
4. Kimmey admits that the facts set forth above constitute a violation of Ohio law thereby subjecting him to conditions under which his license will be reinstated by the Board, pursuant to section 4755.46 of the Ohio Revised Code.

TERMS

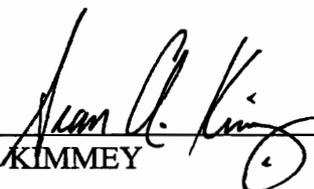
WHEREFORE, in consideration of the foregoing, and in lieu of any further disciplinary action, Kimmey and the Board, knowingly and voluntarily agree to the following terms:

1. Kimmey shall not engage in the practice of physical therapy in Ohio until the Board reinstates his license.
2. Kimmey's license to practice physical therapy in Ohio will be reinstated upon ratification of this consent agreement by the Board, completion of the required reinstatement documents, and successful passage of the Ohio laws and rules examination.
3. Upon ratification of this consent agreement Kimmey's license to practice as a physical therapist assistant in the State of Ohio shall be immediately suspended for a period of fourteen (14) days, plus an additional eleven (11) days, for a total suspension of twenty-five (25) days. Said period of suspension is hereby stayed.

4. Kimmey 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.
5. Failure to abide by the terms of this agreement shall constitute an actionable violation in and of itself without further proof and may subject Kimmey to any and all disciplinary remedies to the Physical Therapy Section including, but not limited to, revocation.
6. Kimmey 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.
7. All parties to this agreement understand that this document is a public record pursuant to Ohio Revised Code 149.43.
8. 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
9. By his signature on this consent agreement, Kimmey 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. Kimmey agrees that should the Board reject this consent agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this consent agreement or of any information relating thereto.
10. 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 Kimmey resulting from the aforementioned conduct.

I, Sean A. Kimmey, have carefully read the above agreement and enter into it freely and voluntarily with full knowledge of its force and effect, and full knowledge of my rights under Ohio law. By executing this agreement, I recognize that if, in the discretion of the Board it appears that I have breached any terms or conditions of this consent agreement, the Board may initiate formal disciplinary proceedings which may be based solely upon a breach of the consent agreement. If the Board finds a breach of this consent 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.



SEAN A. KIMMEY

3-08-04

DATE

Counsel to SEAN A. KIMMEY

DATE



JEFFREY M. ROSA
Executive Director

3-8-04

DATE



STEVEN MCGANN
Assistant Attorney General

3-8-04

DATE