



Counselor, Social Worker & Marriage and Family Therapist Board

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ADJUDICATION ORDER in the Matter of:

Orlando Wimberly
2724 Winsted Drive
Toledo, OH 43606

**IN THE MATTER OF ORLANDO WIMBERLY TO PRACTICE AS A LICENSED
SOCIAL WORKER IN THE STATE OF OHIO.**

**THE MATTER OF ORLANDO WIMBERLY CAME BEFORE THE FOLLOWING
MEMBERS OF THE SOCIAL WORKER PROFESSIONAL STANDARDS
COMMITTEE OF THE OHIO COUNSELOR, SOCIAL WORKER, AND MARRIAGE
AND FAMILY THERAPIST BOARD ON MARCH 20, 2008: TIM BRADY,
JENNIFER RIESECK-LEE, ROBERT NELSON AND KAREN HUEY.**

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Opportunity for Hearing was issued to Orlando Wimberly by the Social Worker Professional Standards Committee on January 18, 2008.

Pursuant to R.C. 119.07 licensees are entitled to a hearing before the Board if such a hearing is requested within thirty days of the mailing of the Notice of Opportunity for Hearing. In this case, Mr. Wimberly failed to make a timely request for such a hearing, therefore pursuant to *Goldman v. State Medical Board* (March 29, 1996) Franklin County Court of Appeals, 95 APE 10-1358 the case was presented to the Social Work Professional Standards Committee on March 20, 2008.

Summary of Evidence

State's Exhibits

1. Affidavit prepared by William L. Hegarty, Deputy Director, State of Ohio Counselor, Social Worker, and Marriage and Family Therapist Board.
2. Notice of Opportunity for Hearing to Mr. Wimberly dated January 18, 2008.
3. Correspondence from the Board to Mr. Wimberly

Conclusions of Law

Ohio Revised Code Section 4757.36(A)(1) provides that the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board may take disciplinary action against a licensee who has committed a violation of any provision of the Board's law and rules. Ohio Administrative Code Section 4757-11-01(C)(21)(b) states that the Board may discipline a licensee who cannot present proof of thirty hours of approved continuing education when audited.

Discussion and Findings

As required in the case of *Goldman v. State Medical Board* (March 29, 1996) Franklin County Court of Appeals 95APE10-1358, all cases where a Board issues a Notice for Opportunity for Hearing and the individual does not request a hearing, the Board still must review evidence presented to it and make specific findings of fact. In this case, Mr. Wimberly did not request a hearing after receipt of his Notice for Opportunity for Hearing.

The Social Worker Professional Standards Committee has reviewed the evidence prepared in this case. The Committee finds that Mr. Wimberly did not comply with the audit requirement after renewing his social work license through May 2009. Based on this, the Committee orders that Mr. Wimberly's license to practice as a social worker (S-0021326) is **Indefinitely Suspended** until he can present proof of taking an additional 12.5 approved continuing education hours. These additional hours will not count toward a further renewal of his license and he must comply with all regular renewal obligations. As Ordered by the Social Worker Professional Standards Committee of the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board.

It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

APPEAL RIGHTS

Under the provisions of Ohio Revised Code Section 119.12, any party adversely affected by an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a license, or revoking or suspending a license, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If any such party is not a resident of and has no place of business in Ohio, the party may appeal to the court of common pleas of Franklin County

This *Order* may be appealed in accordance with Section 119.12 of the Ohio Revised Code by filing the original Notice of Appeal with the Ohio Counselor, Social Worker, and Marriage and Family Therapy Board, 50 West Broad Street, Suite 1075, Columbus, Ohio 43215, and also a copy of that Notice of Appeal with the Court of Common Pleas in the county of the party's place of business, or in the county in which the party is a resident. The Notice of Appeal shall set forth the Order appealed from and the grounds of the Party's appeal. Such Notice of Appeal and copy shall be filed and must be delivered within fifteen (15) days after the mailing of this *Adjudication Order*.

By Order of the State of Ohio Counselor, Social Worker, and Marriage and Family Therapist Board.



James R. Rough
Executive Director

3/21/08
Date

Certified Mail Receipt #7005 1160 0004 7285 5490



**STATE OF OHIO
COUNSELOR AND SOCIAL WORKER BOARD**

**ADJUDICATION ORDER
in the Matter of:**

Orlando Wimberly
2724 Winsted Drive
Toledo, OH 43606

**IN THE MATTER OF ORLANDO WIMBERLY TO PRACTICE AS A LICENSED
SOCIAL WORKER COUNSELOR IN THE STATE OF OHIO.**

**THE MATTER OF ORLANDO WIMBERLY CAME BEFORE THE FOLLOWING
MEMBERS OF THE SOCIAL WORKER PROFESSIONAL STANDARDS
COMMITTEE OF THE OHIO COUNSELOR AND SOCIAL WORKER BOARD:
CHESTER PARTYKA, ROCKY BLACK, GWENDOLYN DACONS-TAYLOR, JANE
DAROFF AND PENNY WYMAN.**

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Violation to a Consent Agreement was issued to Orlando Wimberly by the Social Worker Professional Standards Committee on August 13, 2001.

A hearing was held on October 10, 2001, in front of Hearing Examiner Ronda Shamansky, Esq. At this hearing the Board by and through their Assistant Attorney General, Barbara Petrella, presented evidence in support of the Notice of Violation to a Consent Agreement. Orlando Wimberly was present.

Summary of Evidence

State's Exhibits

1. Letter dated November 27, 2000, to Wimberly from William L. Hegarty, Investigative Supervisor, requesting an explanation based on a complaint received by the Board.
2. Letter dated December 8, 2000, from Hegarty proposing a Consent Agreement be entered between the Board and Wimberly.
3. Letter dated January 19, 2001, from Hegarty to Wimberly notifying him that the Board had approved of the Consent Agreement.
4. Copy of the Consent Agreement between Wimberly and the Board.

5. Copy of the Notice of Violation to a Consent Agreement sent to Wimberly on August 13, 2001.
6. Copy of a computer printout generated by the Board showing the status of Wimberly's license.
7. Letter to the Board from Linda Brewster, date July 19, 2001, providing document concerning Wimberly.
 - 7A. Letter from Rescue Mental Health Services to Wimberly dated September 6, 1995.
 - 7B. Wimberly's job description from Rescue Mental Health Services.
 - 7C. Letter date May 23, 2001, to Wimberly from Rescue Mental Health Services with regard to his social work licensure suspension.
 - 7D. Copy of Rescue Mental Health Services' 5145 Treatment log of Wimberly.
 - 7E. Copy of Rescue Mental Health Services' 5145 financial log concerning Wimberly.
 - 7F. Copy of Rescue Mental Health Services' Service Coding.
8. Testimony of William L. Hegarty, Investigative Supervisor, for the Ohio Counselor and Social Worker Board.
9. Testimony of Robert Franklin, Rescue Mental Health Services.

Discussion

The Social Work Professional Standards Committee has reviewed the Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Committee adopts the Finding of Facts and Conclusion of Law in the Hearing Officer Report and Recommendations. The Committee modifies the Recommendations by requiring Wimberly to be suspended for one year plus to take five (5) hours of continuing education units in addition to the thirty (30) hours required for license renewal. These five hours must be in the area of social work ethics, must be pre-approved by the Board, and completed before November 18, 2002. A copy of the Hearing Officer Report and Recommendations is attached to this Adjudication Order.

THEREFORE, it is hereby **ORDERED** that for the reasons outlined in this **ORDER** and in the attached Hearing Officer Report and Recommendations which is hereby incorporated, by reference, into this **ORDER**, the license of Orlando Wimberly (S-21326) to practice as a Social Worker in the State of Ohio is **SUSPENDED** from November 19, 2001, through November 18, 2002. It is also so **ORDERED** that Wimberly to take five (5) hours of continuing education units in addition to the thirty (30) hours required for license renewal. These five hours must be in the area of social work ethics, must be pre-approved by the Board, and completed before November 18, 2002. This **ORDER** was approved by unanimous vote of the Members of the Committee who reviewed this case.

Motion carried by order of the Social Worker Professional Standards Committee of the Ohio Counselor and Social Worker Board

It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

APPEAL RIGHTS

Pursuant to Section 119.12 of the Ohio Revised Code, you may appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to the court in the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State of Ohio Counselor and Social Worker Board and the appropriate Court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

By Order of the State of Ohio Counselor and Social Worker Board.


Jane Daroff, LISW
Chairman

STATE OF OHIO

COUNSELOR AND SOCIAL WORKER BOARD

**IN THE MATTER OF THE
LICENSURE OF**

Orlando Wimberly

**AS A SOCIAL WORKER
IN THE STATE OF OHIO**

**REPORT AND RECOMMENDATION OF
HEARING EXAMINER**

October 29, 2001

FOR THE LICENSEE:

Orlando Wimberly

HEARING EXAMINER:

**Ronda S. Shamansky
245 East Gay Street
Columbus, Ohio 43215-3210
614/224-9078**

FOR THE BOARD:

**Barbara Petrella
Assistant Attorney General
Health & Human Services Section
30 E. Broad St., 26th Floor
Columbus, Ohio 43215
614/466-8600**

FINDINGS OF FACT:

1. The hearing on this matter was held on Wednesday, October 10, 2001, commencing at 9:30 a.m. in the offices of the Counselor and Social Worker Board, 77 South High Street, Columbus, Ohio. The Board was represented by Barbara Petrella. The licensee, Orlando Wimberly, represented himself. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made.

2. The Board has proposed disciplinary action against Mr. Wimberly's social work license for alleged violations of a Consent Agreement he signed with the Board in December 2000, and which the Board approved at its January 2001 meeting. (State's Exhibit 4.) In that Consent Agreement, Mr. Wimberly agreed to a three month suspension of his license, beginning February 1, 2001 and ending April 30, 2001. The State alleges that Mr. Wimberly continued to work as a social worker and bill for his services during that time, despite the suspension of his license. The Consent Agreement provides that if Mr. Wimberly is found by the Board to have violated any terms of the Agreement, the Board may impose any penalty up to and including the revocation of his license.

3. At the hearing, the Board called Investigative Supervisor William Hegarty to identify documents. Mr. Hegarty testified that the Consent Agreement with Mr. Wimberly arose out of an investigation into a complaint that Mr. Wimberly had forged clients' signatures in five cases during his work with an agency called Unison. He was terminated from his employment at Unison because of that incident, and he chose to sign the Consent Agreement with the Board agreeing to the three month suspension, rather than pursue a disciplinary hearing concerning his license. Mr. Hegarty explained that the Board might offer a Consent Agreement to a licensee instead of conducting a disciplinary hearing if, for example, the charges are not worthy of a formal hearing or if a hearing would require the testimony of mental health patients as witnesses. In this case, Mr. Hegarty testified that the Consent Agreement was sent to Mr. Wimberly, and he returned it signed, without asking to negotiate any of its terms. Sometime thereafter, Mr. Hegarty received an anonymous call from someone who said she was

aware that Mr. Wimberly was still working as a social worker. This hearing was scheduled following a brief investigation.

4. The State also called Robert Franklin to testify at the hearing. Mr. Franklin testified that he is the clinical supervisor of the child and adolescent unit at Rescue Mental Health Services in Toledo. He testified that "Rescue" is a crisis agency funded by the Lucas County Mental Health Board, and that it serves children and adults with psychological or mental health problems, often those who are in crisis such as in cases where individuals are threatening suicide. It operates a mental health hotline and it refers patients to local hospitals for inpatient treatment, in cases where it is warranted. Mr. Franklin testified that he supervised Orlando Wimberly while he was employed at Rescue. Mr. Wimberly was employed part-time, and his job title was "Mental Health Professional I." Mr. Franklin testified that that position requires a bachelor's degree and a social work license. He identified State's Exhibit 7B as Mr. Wimberly's job description the whole time he was employed at that agency.

5. Mr. Franklin confirmed in his testimony that Mr. Wimberly did continue working as a Mental Health Professional I during the dates when his license was suspended, and that Mr. Wimberly did not make him aware of the suspension. He testified that about 80 percent of Rescue's services get billed to Medicaid, and that Medicaid requires a licensed person to do the diagnostic assessments of the agency's clients. He identified State's Exhibit 7D as the agency's record of services provided to clients by Mr. Wimberly during the suspension period. Mr. Franklin explained that while some of those activity codes are things that a non-licensed person can bill for, the "1205" code is for the diagnostic assessment, which must be done by a currently licensed social worker.

6. Mr. Franklin testified that he received an anonymous call from a woman who said that she had read in the Board's newsletter that Mr. Wimberly's license was suspended. He asked Mr. Wimberly about this, and Mr. Wimberly acknowledged that his license had been suspended, but said that it was "all cleared up" now. Mr. Franklin testified that during the time when Mr. Wimberly's license was suspended,

Mr. Wimberly did not sign "LSW" after his name. However, he did sign the same kinds of reports that are required in his position, and he did not have a licensed person sign off on his work. Mr. Franklin testified that the services were actually billed to Medicaid this way, but he did not know whether the agency received payment for them from Medicaid or not. Mr. Franklin identified State's Exhibit 7C as a memo from Rescue's Human Resources Manager to Orlando Wimberly, stating that approximately \$4308.15 would have to be returned to Medicaid because during the time when his license was suspended, Mr. Wimberly was not legally permitted to bill for certain services.

7. On cross-examination by Mr. Wimberly, Mr. Franklin admitted that there were several employees, perhaps 2 to 4, who worked at Rescue in the same job position as Mr. Wimberly who were not licensed social workers. However, those employees were employed prior to the date of Mr. Wimberly's hire on September 6, 1995, and after they left, no other unlicensed persons were hired as Mental Health Professionals ("MHP I.") He testified that Mr. Wimberly was made aware in his letter of hire that a current license as a social worker was a requirement for his position. (State's Exhibit 7A)
8. Mr. Franklin testified that Mr. Wimberly was terminated from his employment at Rescue Mental Health Services on May 23, 2001 because of this incident. (See State's Exhibit 7C.) He also testified, however, that Mr. Wimberly was a good employee and that he was very dedicated to the agency in his six years there. He testified that if Mr. Wimberly had been candid about his suspension, he might have been able to keep his employment there, but would have had to have a licensed person sign off on assessments. He testified that because the agency was pleased with Mr. Wimberly's work in other respects, it would have made that accommodation for him.
9. In the presentation of his case, Mr. Wimberly testified that he continued his work as an MHP I with Rescue Mental Health Services because he knew that there had been other people working at that agency as MHP I's who were not licensed, and therefore, he believed that a license was not necessary. On cross-examination, he acknowledged that his letter of hire advised him that maintaining a current

social work license was a condition of his employment in that position. (State's Exhibit 7A) However, he testified that the letter was sent to him roughly six years prior to the date of his license suspension, and he was not recalling that at the time he decided not to inform his employer of the suspension. Mr. Wimberly further admitted on cross-examination that from a personal standpoint, he wanted to keep the suspension private and he was concerned that his job might be in jeopardy if he made his employer aware of it.

DISCUSSION

The evidence is clear that Orlando Wimberly continued to work as a social worker during a time when he had agreed to a suspension of his license and that to do so constitutes a violation of his Consent Agreement with the Board. Pursuant to the terms of the Consent Agreement, the Board may take whatever action it deems appropriate against his license.

Although the State asked for revocation of Mr. Wimberly's license in its opening statement, by the conclusion of the hearing, the State's Assistant Attorney General changed the request to a one-year suspension of his license, based on Mr. Wimberly's interest in coming to the hearing and his testimony.

I find that a suspension of one year is appropriate in this case, although the Board may, in its discretion, impose a different penalty against the license.

As the trier of fact, I believe that Mr. Wimberly's main concern in deciding not to inform his employer of the suspension was his own worry that he would be embarrassed in his workplace, or perhaps even terminated from his employment. However, because his supervisor acknowledged that at one time, there were a few MHP's who worked in this position without social work licenses, it is possible that Mr. Wimberly did believe a license was not necessary. Although he kept the same position and continued his same functions, he did not sign his assessments as an LSW, but rather as an "MHP." I am not completely convinced that he truly believed a license was not necessary for his position, but because there is some question, a one year suspension of his license may be more appropriate than a revocation.


CONCLUSION OF LAW

I conclude that Orlando Wimberly violated the terms of his Consent Agreement with the Board by practicing social work without a license dur-

ing the time when his license was suspended by this Board. The Consent Agreement gives the Board the authority to impose whatever penalty against the license that it finds appropriate.

RECOMMENDATION

For the reasons detailed in this report, I recommend that the Board suspend Mr. Wimberly's license for a period of one year.


Ronda S. Shamansky
Hearing Examiner

Mr. Wimberly completed the terms of the consent agreement as of 11/18/2002

RECEIVED

DEC 27 '00

COUNSELOR AND SOCIAL
WORKER BOARD

**CONSENT AGREEMENT
BETWEEN
ORLANDO WIMBERLY
AND THE
OHIO STATE COUNSELOR AND SOCIAL WORKER BOARD**

This CONSENT AGREEMENT is entered into by and between ORLANDO WIMBERLY, hereinafter, "WIMBERLY", and the OHIO STATE COUNSELOR AND SOCIAL WORKER BOARD, hereinafter "BOARD", the state agency charged with enforcing Chapter 4757 of the Ohio Revised Code and all rules promulgated thereunder.

WIMBERLY hereby acknowledges that he has read and understands this CONSENT AGREEMENT and has voluntarily entered into it without threat or promise by the BOARD or any of its members, employees or agents.

WIMBERLY is fully aware of his rights, including his right to be advised by counsel and his right to a hearing pursuant to Chapter 119 of the Ohio Revised Code on the issues which are the subject of this CONSENT AGREEMENT. Should WIMBERLY fail to comply with any provisions of this CONSENT AGREEMENT, WIMBERLY knowingly waives his rights under ORC Chapter 119.

This CONSENT 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 CONSENT AGREEMENT.

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

1. WIMBERLY is a social worker (S-21326) licensed to practice social work in the state of Ohio, and is subject to the laws and rules of Ohio regulating the practice of social work as outlined in Ohio Revised Code Chapter 4757.

2. While **WIMBERLY** was employed at Unison Behavioral Health Group, Inc., Toledo, Ohio, **WIMBERLY** signed a client's name in the client's therapeutic chart without the client's permission. **WIMBERLY** did this in five separate client charts. **WIMBERLY** admitted this to his supervisors on September 20, 2000. **WIMBERLY'S** conduct constitutes a violation of Ohio Revised Code Section 4757.36(A)(1) and Ohio Administrative Code Section 4757-5-01(I)(1).
3. **WIMBERLY ADMITS** the allegation referenced in paragraph 2 referenced above.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal disciplinary proceedings, **WIMBERLY** knowingly and voluntarily agrees with **BOARD** to the following terms and conditions:

WIMBERLY'S license to practice social work is **SUSPENDED** for three (3) months beginning February 1, 2001, and ending April 30, 2001.

It is hereby agreed by and between both parties that this **CONSENT AGREEMENT** hereby settles all issues concerning this matter.

By his signature on this **CONSENT AGREEMENT**, **WIMBERLY** acknowledges 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. **WIMBERLY** 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.

If, following notice and an evidentiary hearing, not an Ohio Revised Code Chapter 119 hearing, WIMBERLY is found by the BOARD to have violated any terms of this Consent Agreement, the BOARD may impose any penalty up to and including REVOCATION of WIMBERLY'S social work license based solely upon a violation of this Consent Agreement. WIMBERLY may not appeal this action.

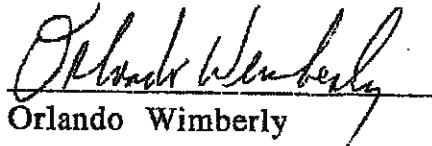
WIMBERLY hereby releases the members of the BOARD, its officers and employees, jointly and severally, from any and all liability arising from the matter within.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43 of the Ohio Revised Code. Pursuant to 42 USC Section 132a-73(b), 5 USC Section 552a, 45 CFR part 61 and Ohio Revised Code Section 2301.373(E), the BOARD may be required to provide WIMBERLY'S social security number to requesting governmental agencies.

The BOARD shall incorporate this CONSENT AGREEMENT into a formal journal entry at its January, 2001, meeting.

This CONSENT AGREEMENT shall take effect upon the date of the last signature below:

THE OHIO COUNSELOR AND
SOCIAL WORKER BOARD


Orlando Wimberly

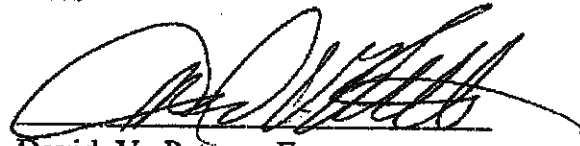

Chester Partyka
Chair, Counselor and Social Worker Board

Date

1-19-01

Date

Counsel for Mr. Wimberly


David V. Patton, Esq.
Assistant Attorney General
Counselor and Social Worker Board

Date

1-8-01

Date