

OPINION NO. 85-020**Syllabus:**

R.C. 4755.48(B) prohibits a person who is not licensed as a physical therapist or physical therapist assistant pursuant to R.C. 4755.40-.50 and who is not exempt from licensure pursuant to R.C. 4755.50 from practicing physical therapy even if the service provided by such person is not designated as physical therapy and even though the person performing or offering to perform such service does not refer to himself as a physical therapist or physical therapist assistant or use words or initials to imply that he is licensed to practice physical therapy.

To: Charlotte Wilcox, Director, Ohio Occupational Therapy and Physical Therapy Board, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 14, 1985

In your request for my opinion you wish to know whether a person who is not licensed to practice physical therapy and who is not exempt from licensure under R.C. 4755.50 may practice physical therapy so long as the service provided is not designated as physical therapy and the person offering or performing the service is not referring to himself as a physical therapist or physical therapist assistant or using any words or initials which imply he is a licensed physical therapist. You have elaborated on your question as follows:

An example would be a person who is not licensed to practice physical therapy and is not a licensed practitioner operating under the exemption of 4755.50, ORC, who is treating a client/patient by the use of therapeutic exercise for the purpose of preventing, correcting, or alleviating a disability. Assuming that the person in the example is billing the service as therapeutic exercise, rehabilitation medicine, physical medicine, etc., and is not claiming to be a physical therapist or physical therapist assistant, would he be in violation of 4755.48(B) since the treatment and the purpose for the treatment is described in 4755.40, ORC, as being physical therapy?

The practice of physical therapy is governed by the provisions of R.C. 4755.40-.50 and R.C. 4755.99. "Physical therapy" is defined pursuant to R.C. 4755.40(A) as:

the evaluation and treatment of a person by physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting, or alleviating any disability. Physical therapy includes the establishment and modification of physical therapy programs, treatment planning, instruction, and consultative services. Physical measures include massage, heat, cold, air, light, water, electricity, sound, and the performance of tests of neuromuscular function as an aid to such treatment. Physical therapy does not include the diagnosis of a patient's disability, the use of roentgen rays or radium for diagnostic or therapeutic purposes, or the use of electricity for cauterization or other surgical purposes. Physical therapy includes physiotherapy.

A "physical therapist" is a person who practices physical therapy, R.C. 4755.40(B), and a "physical therapist assistant" is "a person who assists in the provision of physical therapy treatments under the supervision of a physical therapist," R.C. 4755.40(C). Persons are licensed by the Physical Therapy Section of the Occupational Therapy and Physical Therapy Board to be physical therapists or physical therapist assistants. See R.C. 4755.42 (qualifications of persons desiring to be physical therapists and physical therapist assistants); R.C. 4755.43 (examination of persons who wish to be physical therapists and physical therapist assistants); R.C. 4755.44 (payment of required fees by applicants and licensure by the Physical Therapy Section).

R.C. 4755.48(B) provides that:

No person shall practice or in any way hold himself out as being able to practice physical therapy, including practice as a physical therapist assistant, unless he holds a valid license under sections 4755.40 to 4755.50 of the Revised Code.

See R.C. 4755.48(C) (prohibiting the use of certain words, letters, abbreviations and insignia by a person who is not a licensed physical therapist or physical therapist assistant). R.C. 4755.50 provides, however, that:

Nothing in this chapter shall be construed to prevent or restrict the practice of any person who is a licensed practitioner in the state of Ohio, or of anyone employed or supervised by such person. However, services rendered by such person, or by anyone employed or supervised by such person, shall not be designated as physical therapy.

Section 4755.48(B) thereby permits only licensed physical therapists and physical therapist assistants to practice physical therapy, subject to one exception, that nothing in Chapter 4755 may be construed to prevent or restrict the practice of licensed practitioners and persons employed by licensed practitioners, whose services are not designated as physical therapy. R.C. 4755.50. See 1980 Op. Att'y Gen. No. 80-079. A person who violates R.C. 4755.48(B) is guilty of a second degree misdemeanor. R.C. 4755.99(C).

A person who is not licensed as a physical therapist or a physical therapist assistant and who does not fall within the ambit of R.C. 4755.50 may not engage in the practice of physical therapy. See Op. No. 80-079. It is of no relevance that such person does not designate his services as physical therapy, refer to himself as a physical therapist or physical therapist assistant, or use any words or initials to imply that he is licensed to practice physical therapy. Accordingly, the practice of physical therapy by one not authorized by statute to do so violates R.C. 4755.48(B), even if the treatment provided is not characterized as physical therapy and even though the person who performs the service does not hold himself out as a physical therapist or physical therapist assistant.

A person who treats a client or patient by the use of therapeutic exercise for the purpose of preventing, correcting, or alleviating a disability is practicing physical therapy as the term is defined by R.C. 4755.40(A), regardless of whether the service is characterized as therapeutic exercise, rehabilitation medicine, physical medicine, or as some other service. The statute in question, R.C. 4755.48(B), admits of no exception for persons who engage in the practice of physical therapy, but who give their practice some other name. Under similar statutes which govern professions other than physical therapy, individuals have been found to have engaged in the unauthorized practice of such professions, although in each case the accused characterized his or her services as something other than the practice of the licensed profession at issue. See, e.g., In re Unauthorized Practice of Law, 175 Ohio St. 149, 192 N.E.2d 54 (1963) (unauthorized practice of law by persons representing workers' compensation claimants); State v. Marble, 72 Ohio St. 21, 73 N.E. 1063 (1905) (unauthorized practice of medicine); State v. Fishwick, 84 Ohio App. 283, 85 N.E.2d 136 (Hamilton County 1948) (unauthorized practice of dentistry). If a person who is not a licensed physical therapist or physical therapist assistant, or who does not fall within R.C. 4755.50,

practices physical therapy, such person is practicing unlicensed physical therapy in violation of R.C. 4755.48(B), regardless of how the service is characterized and regardless of the fact that such person does not hold himself out as a physical therapist.

Based on the foregoing analysis, it is my opinion, and you are therefore advised, that R.C. 4755.48(B) prohibits a person who is not licensed as a physical therapist or physical therapist assistant pursuant to R.C. 4755.40-.50 and who is not exempt from licensure pursuant to R.C. 4755.50 from practicing physical therapy even if the service provided by such person is not designated as physical therapy and even though the person performing or offering to perform such service does not refer to himself as a physical therapist or physical therapist assistant or use words or initials to imply that he is licensed to practice physical therapy.