



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

November 8, 2006

Kimberly Ann Lee, M.T.
4805 Stickney Avenue
Cleveland, OH 44144

Dear Ms. Lee:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Christopher B. McNeil, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2006, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4330 1323
RETURN RECEIPT REQUESTED

Cc: 1425 Waterbury Avenue, #15
Lakewood, OH 44107
CERTIFIED MAIL NO. 7003 0500 0002 4330 1316
RETURN RECEIPT REQUESTED

Mailed 11-9-06

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Christopher B. McNeil, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2006, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Kimberly Ann Lee, M.T., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

November 8, 2006
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

KIMBERLY ANN LEE, M.T.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 8, 2006.

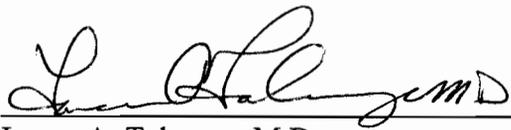
Upon the Report and Recommendation of Christopher B. McNeil, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Kimberly Ann Lee, M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

November 8, 2006

Date

2006 SEP 22 P 1: 47

**REPORT AND RECOMMENDATION
IN THE MATTER OF KIMBERLY ANN LEE, M.T.,
NOW KNOWN AS KIMBERLY ANN O'BRIEN, M.T.**

The Matter of Kimberly Ann Lee, M.T., was heard by Christopher B. McNeil, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 30, 2006.

INTRODUCTION

I. Basis for Hearing

- A. In a letter dated June 14, 2006, the State Medical Board of Ohio [Board] notified Kimberly Ann Lee, M.T. (now known as Kimberly Ann O'Brien, M.T.), that the Board intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate Ms. Lee's certificate to practice massage therapy, or to reprimand her or place her on probation, for one or more of the reasons set forth in the letter. The Board based its proposed action on allegations that Ms. Lee entered "[a] plea of guilty to . . . a felony" as that clause is used in § 4731.22(B)(9) of the Ohio Revised Code. Accordingly, the Board advised Ms. Lee of her right to request a hearing in this matter. (See State's Exhibit [St. Ex.] 1A)
- B. On June 30, 2006, the Board received a written hearing request submitted by Ms. Lee. (St. Ex. 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Barbara Pfeiffer and Karen Unver, Assistant Attorneys General.
- B. On behalf of the Respondent: Kimberly Ann Lee, M.T., *pro se*.

EVIDENCE EXAMINED

I. Testimony Heard

The State presented the testimony of Kimberly Ann Lee. Ms. Lee also testified on her own behalf, and presented the testimony of Rita Stanton.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1J: Procedural exhibits.
2. State's Exhibit 2: Certified copies of records of indictment, criminal complaint with supporting affidavit, conviction upon a plea, and judgment of sentencing, all from the United States District Court.
3. State's Exhibit 3: Letter to the Board from Kimberly Lee, M.T., dated February 14, 2006.
4. State's Exhibit 4: Entry of Appearance of Barbara Pfeiffer, on behalf of the Board.

B. Presented by the Respondent

The Respondent did not offer any Exhibits.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. The Respondent holds a certificate issued by the State Medical Board of Ohio to practice massage therapy under the name of Kimberly Ann Lee. Kimberly Ann Lee was the Respondent's married name at the time she secured the massage therapist certificate in Ohio. She is, however, no longer married, and testified that she now is known as Kimberly Ann O'Brien, which is her maiden name. In January 2006, the Respondent applied to renew her certificate to practice in Ohio as a massage therapist. (Transcript of Proceedings conducted on August 30, 2006 [Tr.] at 9-10.)
2. On August 5, 2003, Ms. Lee (using the name O'Brien) agreed to assist Dennis Gaul in the robbery of the Charter One Bank in Cleveland, Ohio. She drove Mr. Gaul to the bank in her car, knowing that Mr. Gaul was going to rob the bank. (State's Exhibit [St. Ex.] 2, Plea Agreement filed October 8, 2003 [Plea Agreement]).
3. On August 12, 2003, Mr. Gaul admitted to robbing two banks, including Charter One, and admitted to using Ms. O'Brien's car to commit these robberies. On that same day,

Ms. O'Brien admitted that she had been involved in the planning and execution of the robbery of Charter One Bank, and admitted to helping Mr. Gaul clean the dye-stained money and using the money to purchase heroin. (Kolonick Affidavit at p. 4)

4. On entering a plea of guilty to one count of violating 18 U.S.C. § 2113(a) (unarmed bank robbery), Ms. O'Brien was convicted of this felony offense and was sentenced to the Bureau of Prisons for a term of 30 months, with three years of supervised release thereafter. She was also required to participate in an outpatient program for the treatment of drug and alcohol abuse (with testing) and pay restitution in the amount of \$2,536.00. (St. Ex. 2, Criminal Docket filed September 3, 2003 (Crim. Docket), at 1)
5. In her January 21, 2006, application seeking the renewal of her certificate to practice as a Massage Therapist in Ohio, Ms. Lee disclosed that she had entered a plea of guilty to and had been convicted of Bank Robbery, a felony. (Tr. at 11) In response, the Board through its staff directed that Ms. Lee provide additional information about the plea and conviction. Ms. Lee responded by submitting a letter dated February 14, 2006, shown as State's Exhibit [St. Ex.] 3. (Tr. at 11)
6. In her letter to the Board, Ms. Lee explained that she had been convicted of violating 11 U.S.C. § 2 and 18 U.S.C. § 2113(a), Bank Robbery, under the name Kimberly Ann O'Brien, but that her "professional name has been and will remain Kimberly Lee." (St. Ex. 3) Ms. Lee also provided the Board with a copy of the plea agreement she entered into as well as the other documents shown in State's Exhibit 2, and said she is not disputing the fact that she was convicted of the felony offense shown in these records. (Tr. at 12, 14)
7. Ms. Lee explained that the arrest was her first ever, and she currently is on a term of federal probation that will run for another two years, and is up to date on restitution payments being made at the rate of \$60.00 per month. (Tr. at 18, 20)
8. Ms. Lee also presented the testimony of Rita Stanton. Ms. Stanton said she has known Ms. Lee for seventeen years, and described Ms. Lee as a close friend. (Tr. at 21) Without defending what Ms. Lee did, Ms. Stanton said there were many members of AA who know Ms. Lee is "doing a good job now and she is going to a lot of meetings." (Tr. at 22) Ms. Stanton added that "although [Ms. Lee] did make this mistake, she's making up for it and she's working with a lot of people just, you know, being responsible." (Tr. at 22)
9. According to Ms. Stanton, apart from the time associated with this criminal charge, Ms. Lee over the past seventeen years has been a regular and contributing member of AA, was a contributing member of the school where their children went, participated in PTA events, and was "a very responsible mother and member of the community for many years." (Tr. at 21, 23) Ms. Stanton said:

I know it's a big risk for the Board, but Kim is really making headway. . . . I can never guess whether anybody is ever going to make a mistake again, and I certainly wouldn't try to guess on this. Of all the people I've seen in the program stay sober, Kim is right there. I really don't believe (in my opinion) that she's ever going to drink or use again.
(Tr. at 22)

10. Ms. Lee stated "I can't argue the fact that I am a drug addict and alcoholic, and I'm not going to. All I can say is that I'm doing all that I can today to prevent that from happening again." (Tr. at 27) She explained why she wanted to make this presentation to the Board:

I'm doing all that I can for my alcoholism and drug addiction. I attend AA meetings. I do volunteer work. One of my jobs right now is part time at a detox center. I have AA support. I'm in counseling bimonthly through the federal government, and I'm doing all that I can today to live a decent life. I very much enjoy doing massage. I would like to get it back. It would help my income out greatly. Right now I have a couple of part-time jobs and I do make ends meet; but massage, even if it was on a part-time basis, would help me immensely. I worked hard to get my license, and I did well with it for a while until my drug addiction took over. And I'm doing all that I can today to live a decent life, and I would like – I would like to get back to it if possible. But I know that this is a very serious offense and the decision is in the hands of the Board[.] (Tr. at 18-19)

ANALYSIS

The record establishes that Ms. Lee has been convicted of a felony, for robbing a bank in 2003. She confessed to her crime and did not require a trial in order to prove her guilt. Upon being convicted, she served a thirty-month prison sentence as punishment for her crime. She is making restitution for the money taken from the bank, and is apparently fully compliant with all terms of her probation.

The State therefore has met its burden of proving the factual and legal bases required for the Board to take action with respect to Ms. Lee's massage therapist certificate. In mitigation, Ms. Lee can fairly point to the fact that this crime is the only crime she has ever been charged with, and that she is doing all she can to make amends to society. Nevertheless, the State correctly notes that the criminal acts arose at a time when Ms. Lee appeared to be doing very well: she was attending AA meetings, actively engaged in community and school matters, and showed no advance signs of an impending relapse. Accordingly, there is a risk that when given the measure of trust attendant to having a certificate to practice massage therapy, Ms. Lee may once again experience the loss of good judgment she experienced in 2003.

Because the Board's first obligation is to protect the public, cause has been shown to revoke permanently Ms. Lee's massage therapist certificate.

FINDINGS OF FACT

1. On October 3, 2003, the Respondent Kimberly Ann Lee, M.T., who was at that time known as Kimberly A. O'Brien, entered a plea of guilty to aiding and abetting another person to commit an unarmed bank robbery. Upon this plea, the United States District Court for the Northern District of Ohio found Ms. Lee guilty of violating Title 18, §§ 2 and 2113(a) of the United States Code, aiding and abetting a bank robbery, which is a felony offense.
2. On January 21, 2006, Ms. Lee applied with the State Medical Board of Ohio for the renewal of her Ohio certificate to practice massage therapy. That application is pending now before the Board.
3. When it received Ms. Lee's application for the renewal of her massage therapist's certificate, the Board set forth its allegations against the Respondent in a notice of opportunity for hearing dated June 14, 2006. In a written response received by the Board on June 30, 2006, the Respondent invoked her right to have an administrative review of the charge. In a letter dated July 3, 2006 the Board acknowledged its receipt of the Respondent's request for a hearing. The Board then set the matter for a hearing to commence on July 9, 2006, continued the hearing, appointed an administrative hearing examiner, and provided the parties with an opportunity to be heard on the charges in an evidentiary hearing conducted on August 30, 2006.

CONCLUSION OF LAW

1. Because she has applied for the renewal of a certificate to practice massage therapy in Ohio, the Respondent, Kimberly Ann Lee, M.T., is subject to the jurisdiction of the State Medical Board of Ohio in actions taken pursuant to R.C. Chapter 4731.
2. Upon sufficient cause to believe the Respondent has violated a provision of R.C. Chapter 4731, the Board is authorized to take action with respect to the Respondent's certificate. The Respondent timely requested an evidentiary hearing before the Board took any final action based upon the Board's charge. Upon its receipt of the Respondent's request for a hearing, the Board set the matter for hearing in the manner provided for by the Administrative Procedure Act, and provided the Respondent with an opportunity to be heard, all in the manner provided for by law.
3. The Board may take disciplinary action against a person seeking the renewal of a massage therapist certificate upon sufficient proof that the person has been convicted of a felony. The conviction entered by the federal court in the matter of *U.S. v. O'Brien*, as described in

Finding of Fact No. 1, constitutes “a judicial finding of guilt . . . of a felony” as that clause is used in R.C. 4731.22(B)(9).

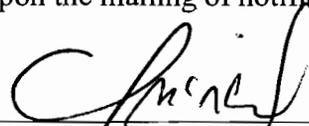
4. Upon sufficient proof that the Respondent has violated any provision of R.C. 4731.22(B), as has been demonstrated in the foregoing findings of fact and conclusions of law, the Board, by an affirmative vote of not fewer than six of its members, shall to the extent permitted by law limit, revoke or suspend an individual’s certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate, all pursuant to R.C. 4731.22(B). Further, when the Board revokes an individual’s certificate to practice, it may specify that the action is permanent. An individual subject to permanent action taken by the Board is forever thereafter ineligible to hold a certificate to practice and the Board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate. See R.C. 4731.22(L) (2005).

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Kimberly Ann Lee, M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.



Christopher B. McNeil, Esq.
Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 8, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Fred Andrew Brindle, M.D.; Sudheera Kalepu, M.D.; Kimberly Ann Lee, M.T.; Praveen Menon, M.D.; Charles M Momah, M.D.; Kolli Mohan Prasad, M.D.; Mark Robert Rosenberg, M.D.; and Mary Mei-Ling Yun, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Robbins asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Robbins noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further

participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Robbins stated that, if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

KIMBERLY ANN LEE, M.T.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. MCNEIL'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF KIMBERLY ANN LEE, M.T. DR. EGNER SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor. • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

June 14, 2006

Kimberly Ann Lee, M.T.
AKA Kimberly Ann O'Brien, M.T.
4805 Stickney Avenue
Cleveland, Ohio 44144

Dear Ms. Lee:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about January 21, 2006, you submitted to the Board your application for renewal of your Ohio certificate to practice massage therapy, due on August 1, 2005, wherein you affirmatively answered question number 1 which asks, "[a]t any time since signing your last application for renewal of your certificate, have you been found guilty of, or pled guilty * * * to * * * a misdemeanor or felony?" Subsequently, by letter dated February 14, 2006, you submitted information to the Board explaining that on or about December 11, 2003, in the United States District Court, Northern District of Ohio, Eastern Division, you pleaded guilty to, and were found guilty of, one felony count of Bank Robbery in violation of Title 18 USC Sections 2113(a) and 2. You were sentenced to imprisonment for a total term of 30 months. Copies of the [redacted] Indictment, Plea Agreement, and Judgment in a Criminal Case are attached hereto and incorporated herein.

Further, upon release from imprisonment you were sentenced to supervised release for a term of three years with conditions of supervised release to include that you shall participate in an outpatient program approved by the U.S. Probation Office for the treatment of drug and/or alcohol abuse, including testing to determine if you have reverted to substance abuse. Additionally, you were ordered to make restitution in the amount of \$2,536.00 to Charter One Bank, Cleveland, Ohio.

Your plea of guilty and/or the judicial finding of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of

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guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

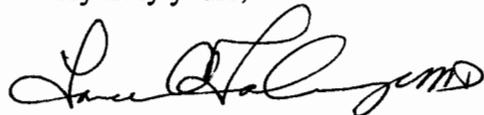
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4330 8919
RETURN RECEIPT REQUESTED

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cf

U.S. DISTRICT COURT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DENNIS J. GAUL,)
 KIMBERLY A. O'BRIEN)
)
 Defendants.)

I N D I C T M E N T

1:03CR 354
CASE NO.

Title 18, Sections
2113(a) and 2
United States Code

JUDGE DOWD

COUNT 1

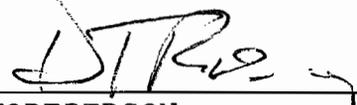
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COUNT 2

The Grand Jury further charges:

On or about August 5, 2003, in the Northern District of Ohio, Eastern Division, DENNIS J. GAUL and KIMBERLY A. O'BRIEN, by force and violence and by intimidation, did take and cause to be taken from the person and presence of Maya Abiaki and Molly Burson, tellers at the Charter One Bank, 11623 Clifton Boulevard, Cleveland, Ohio, approximately \$2,536.00 in money belonging to and in the care, custody, control, management and possession of said bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation; in violation of Title 18, Sections 2113(a), and 2, United States Code.

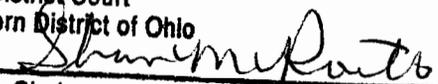
A TRUE BILL



FOREPERSON



GREGORY A. WHITE
United States Attorney

correct copy of the original is a true and
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio
By: 

Deputy Clerk

FILED

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U.S. DISTRICT COURT
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:03CR0354
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	
)	
KIMBERLY A. O'BRIEN)	<u>PLEA AGREEMENT</u>
)	
Defendant.)	

Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure and in consideration of the mutual promises set forth below, the following Agreement is entered into by and between Kimberly A. O'Brien, and the United States of America, by Gregory A. White, United States Attorney, and Joseph P. Schmitz, Assistant United States Attorney.

The defendant, Kimberly A. O'Brien, having been advised of her constitutional rights, including the right to a trial by jury or by the Court, the right to confront and cross-examine witnesses against her, the right to call witnesses in her behalf, the right to be represented by an attorney at trial, and her

ISSUED

OCT 08 2003

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privilege against self-incrimination, specifically and voluntarily waives these rights and privileges and agrees to enter a plea of guilty to the offense set forth in Count 2 of the Indictment, aiding and abetting unarmed bank robbery, in violation of Title 18, Sections 2113(a) and 2 of the United States Code. The defendant understands that the offense of aiding and abetting unarmed bank robbery carries a maximum possible sentence of twenty (20) years imprisonment, a fine of up to \$250,000, and a mandatory \$100.00 special assessment, which is due and payable at the time of sentencing. The defendant also understands that upon completion of any term of imprisonment imposed in this case, she will be required to serve a term of supervised release of up to three years. The defendant further understands that restitution may be required as a result of her guilty plea.

The defendant further understands that following the entry of her guilty plea, her sentence will be determined in accordance with the United States Sentencing Guidelines (U.S.S.G.), which will prescribe a range within which the sentencing court will be required, unless grounds for departure exist, to fix the defendant's sentence. The defendant also understands that the guideline range will be determined by the Court at the time of sentencing, after a presentence report has been prepared by the Probation Department and reviewed by each side.

GUIDELINE STIPULATIONS

For purposes of determining the defendant's sentence and applicable guideline range, the U.S. Attorney's Office and the defendant agree and stipulate pursuant to Rule 11(c)(1)(B), that:

1. The appropriate base offense level for the case is Level 20, pursuant to U.S.S.G. § 2B3.1(a);
2. An increase of two (2) levels to the base offense level is warranted under U.S.S.G. § 2B3.1(b)(1)(A) because the offense involved the taking of property from a financial institution;
3. No other adjustment to the base offense level is warranted under the Specific Offense Characteristics of U.S.S.G. § 2B3.1(b);
4. A downward adjustment of three (3) levels is warranted under U.S.S.G. §§ 3E1.1(a) and (b); and
5. The appropriate Total Offense Level for the case is Level 19.

SENTENCING RECOMMENDATION AND DEPARTURES

The U.S. Attorney's Office agrees that it will not ask the Court to impose a sentence in excess of that set forth in the defendant's guideline range, as that range is ultimately determined by the Court. It is understood, however, that this Agreement does not prohibit the defendant from seeking a downward departure from the applicable guideline range. The defendant understands, however, that should a request for a departure be made on her behalf, the government may, if it so chooses, oppose

and contest any such request. In the event the Sentencing Court fails or refuses to grant a downward departure, the U.S. Attorney's Office agrees to recommend, pursuant to Rule 11(c)(1)(B), that the defendant be sentenced to a term of imprisonment equal to the low end of the prescribed guideline range.

RECOMMENDATION FOR SUBSTANCE ABUSE TREATMENT

The U.S. Attorney's Office agrees that it will not oppose a request to the Court that the Court include in its Judgment and Commitment a recommendation to the U.S. Bureau of Prisons that the defendant receive residential substance abuse treatment, as provided for in 18 U.S.C. § 3621(e). The defendant understands that such a recommendation by the Court will not bind the Bureau of Prisons, and that the Bureau of Prisons will alone decide whether the defendant should be given an opportunity to participate in the residential substance abuse treatment program.

WAIVER OF APPELLATE AND POST-CONVICTION RIGHTS

Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. Defendant expressly and voluntarily waives those rights except as reserved below. Defendant reserves the right to appeal: (a) any

punishment in excess of the statutory maximum; (b) any punishment to the extent it constitutes an upward departure from the Sentencing Guidelines; or (c) any punishment resulting from a refusal by the Sentencing Court to accept and follow the Guideline Stipulations set forth on page 3 of the Agreement. The defendant understands that by virtue of this Agreement, she is waiving and giving up any right she may otherwise have to appeal a failure or refusal on the part of the Sentencing Court to downward depart. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies she may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or governmental misconduct.

FACTUAL BASIS FOR GUILTY PLEA

As a factual basis for her plea of guilty to the charge of unarmed bank robbery, the defendant hereby waives her privilege against self-incrimination and agrees that the following summary fairly and accurately sets forth the defendant's offense conduct and a factual basis for her guilty plea. The defendant further agrees that the facts set forth in the summary are true and could be established beyond any reasonable doubt if the case were to proceed to trial:

On August 5, 2003, defendant Kimberly A. O'Brien agreed to assist Dennis Gaul in the robbery of the Charter One Bank, 11623 Clifton Boulevard, in Cleveland, Ohio. The defendant transported Dennis Gaul to the area of the Charter One Bank in her Ford

Probe, knowing at the time that Dennis Gaul intended to rob the bank. While the defendant waited in her car at a location near the bank, Dennis Gaul entered the Charter One Bank, approached tellers, and obtained from the tellers, by force, violence or intimidation, \$2,536 in monies belonging to and in the care and custody of the Charter One Bank. After committing the robbery, Dennis Gaul returned to the location where the defendant had parked the Ford Probe and reentered the car. The defendant then drove Dennis Gaul from the area of the Charter One Bank, knowing Dennis Gaul had robbed the bank and that she was assisting in his escape. Upon returning to a residence at 3321 West 52nd Street, the defendant helped wash monies taken in the robbery, knowing the monies were proceeds from the robbery and that the monies had been stained when a dye pack exploded while the defendant and Dennis Gaul were leaving the area of the bank.

The defendant acknowledges that at the time she assisted Dennis Gaul in the robbery of the Charter One Bank, the deposits of the bank were insured by the Federal Deposit Insurance Corporation. The defendant further acknowledges and agrees that on August 12, 2003, she provided agents of the FBI a voluntary statement in which she truthfully admitted her involvement in the August 5th robbery of the Charter One Bank. The defendant lastly acknowledges and agrees that in helping Dennis Gaul rob the Charter One Bank, she acted voluntarily and with knowledge she was breaking the law.

ATTESTATION

The defendant acknowledges that she has read this Plea Agreement, that she has had an opportunity to discuss it with her attorney, that she fully understands the Agreement, and that she is satisfied with the representation of her attorney. The defendant further acknowledges that she is pleading guilty to the charge of unarmed bank robbery because she is in fact guilty of that offense. The defendant further acknowledges that this is the entire Plea Agreement between her and the United States of America, and that the Agreement has been entered into by the

defendant knowingly, freely and voluntarily and without threats from anyone, after due consultation with her undersigned attorney.

Kimberly A. O'Brien
KIMBERLY A. O'BRIEN
Defendant

10/3/03
Date

Debra M. Hughes
DEBRA HUGHES
Counsel for Defendant

10.03.03
Date

GREGORY A. WHITE
United States Attorney

By: Joseph P. Schmitz
Joseph P. Schmitz
Assistant U.S. Attorney
Reg. No. 0021231
400 U.S. Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 622-3758
(216) 522-8355 FAX
joseph.schmitz@usdoj.gov

Oct. 3, 2003
Date

APPROVED:

[Signature]
United States District Judge

10-3-03
Date

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio
By: [Signature]
Deputy Clerk

United States District Court
Northern District of Ohio
Eastern Division

UNITED STATES OF AMERICA
v.
KIMBERLY A. O'BRIEN

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 1:03CR354-0002
Counsel For Defendant: **DEBRA HUGHES**
Counsel For The United States: **JOSEPH P. SCHMITZ**
Court Reporter: **BRUCE MATTHEWS**

FILED
03 DEC 15 PM 5:16
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

THE DEFENDANT:
 pleaded guilty to count 2

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section Number(s)</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 2113(a) and 2	Bank Robbery	08/05/03	2

The defendant is sentenced as provided in pages 1 through 6 Of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s) (Is) (are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No. [REDACTED]
Defendant's Date of Birth: [REDACTED]
Defendant's USM Number: [REDACTED]

DECEMBER 11, 2003
Date of Imposition of Judgment

Defendant's Residence Address:
2056 Warren Road
Lakewood, Ohio 44107


Signature of Judicial Officer
PATRICIA A. GAUGHAN
United States District Judge

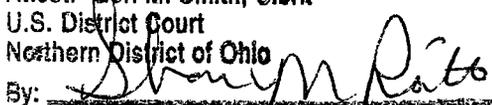
Defendant's Mailing Address:
2056 Warren Road
Lakewood, Ohio 44107

Date: 12-15-03

ISSUED
DEC 15 2003

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Gerl M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By: 
Deputy Clerk

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DEFENDANT: **O'BRIEN, KIMBERLY A.**
CASE NUMBER: **1:03CR354-0002**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **30 MONTHS**.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.

At _____ A.m. / p.m. on

as notified by the United States Marshal.

The defendant shall continue under the terms and conditions of his / her present bond pending surrender to the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2:00 p.m. on the date indicated as notified by the United States Marshal.

Before 2:00 p.m. on

as notified by the United States Marshal.

As notified by the Probation or Pretrial Services Office.

The defendant shall continue under the terms and conditions of his / her present bond pending surrender to the institution.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ To _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: **O'BRIEN, KIMBERLY A.**

CASE NUMBER: **1:03CR354-0002**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall report to the probation office in the district in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Pursuant to 18 U.S.C. 3583(d), the court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

Unless otherwise stated in this Judgment, the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

- The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).
- The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) The defendant shall support his or her dependents and meet other family responsibilities;
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) The defendant shall permit a probation officer to visit him or her at anytime at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **O'BRIEN, KIMBERLY A.**
CASE NUMBER: **1:03CR354-0002**

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

- The defendant shall reside in a community treatment center, halfway house, or similar facility for a period of _____ Days/months to begin not later than _____ (Work/medical release privileges granted).
- The defendant is committed to the custody of the Bureau of Prisons for _____ Months. It is recommended that the Comprehensive Sanctions Center be designated as the place of confinement.
- Upon release from the imprisonment portion of this sentence, the defendant shall be placed on supervised release for _____ Years. (Split-Sentence)
- The defendant shall participate in the Home Confinement Program with / without Electronic Monitoring for a period of _____ Days/months beginning no later than 30 calendar days from sentencing. You are required to remain in your residence unless you are given permission in advance by your Probation Officer to be elsewhere. You may leave your residence to work, to receive medical treatment and to attend religious services. You shall wear an electronic monitoring device, follow electronic monitoring procedures and submit to random drug/alcohol tests as specified by the Probation Officer. The defendant may participate in the Earned Leave Program under terms set by the Probation Officer. The defendant shall be required to pay the cost of the Home Confinement Program as directed by the Probation Officer.
- The defendant is not required to pay the costs associated with the Home Confinement Program.
- The defendant shall perform _____ Hours of community service as directed by the Probation Officer.
- The defendant shall reside and participate in a residential drug treatment program as instructed by your Probation Officer, until discharged by the facility and as approved by your Probation Officer.
- The defendant shall participate in, and successfully complete, a cognitive restructuring program as instructed by your Probation Officer.
- The defendant shall participate in an outpatient program approved by the U.S. Probation Office for the treatment for drug and/or alcohol abuse which will include testing to determine if the defendant has reverted to substance abuse.**
- The defendant shall participate in an outpatient mental health program as directed by the Probation Officer.
- The defendant shall permit his Probation Officer to conduct random searches and examinations of any personal computer/computing systems utilized by the defendant. The defendant shall assist such searches by providing all passwords and password phrases, together with all other information necessary to enable access to any and all computer files.
- The defendant shall provide the Probation Officer access to any requested financial information.**
- The defendant shall not incur new credit charges or open additional lines of credit without the approval of the Probation Officer unless the defendant is in compliance with the payment schedule.

DEFENDANT: **O'BRIEN, KIMBERLY A.**
CASE NUMBER: **1:03CR354-0002**

FINE AND/OR RESTITUTION

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Totals:	Assessment	Fine	Restitution
	\$100.00	\$	\$ 2,536.00

- If applicable, restitution amount ordered pursuant to plea agreement. \$
- Payments are to commence during the period of confinement through Bureau of Prisons Inmate Financial Responsibility Program in an amount determined to be appropriate.

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- The interest requirement is waived for the
 - fine and/or
 - restitution.
- The interest requirement for the
 - fine and/or
 - restitution is modified as follows:

RESTITUTION

- The determination of restitution is deferred until An Amended Judgment in a Criminal Case will be entered after such a determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage of Payment
Charter One Bank 11623 Clifton Boulevard Cleveland, Ohio		\$2,536.00	
Total:		\$2,536.00	

- Additional Restitution Payees
 - ** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: O'BRIEN, KIMBERLY A.
CASE NUMBER: 1:03CR354-0002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A special assessment of \$100.00 is due in full immediately on count 1 ;
- B Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with ____ C, ____ D, or ____ E below; or
- C Payment to begin immediately (may be combined with ____ C, ____ D, or ____ E below); or
- D payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of This judgment; or
- E Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release From imprisonment to a term of supervision; or
- F Special instructions regarding the payment of criminal monetary penalties:

THE DEFENDANT SHALL MAKE RESTITUTION THROUGH THE BUREAU OF PRISON'S FINANCIAL RESPONSIBILITY PROGRAM. ANY UNPAID AMOUNT UPON RELEASE FROM PRISON, SHALL BE MADE AT A MINIMUM RATE OF NOT LESS THAN 10% GROSS MONTHLY INCOME.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.
PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

Joint and Several

Dennis J. Gaul, 1:02CR354-001, and Joint and Several Amount is \$2,536.00.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.