

**STATE OF FLORIDA  
BOARD OF MASSAGE THERAPY**

**IN RE: THE PETITION FOR DECLARATORY STATEMENT OF  
PEACHTREE CASUALTY INSURANCE COMPANY**

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**FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT**

THIS MATTER came before the Board of Massage Therapy ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held on January 22, 2010 in Orlando, Florida, for the purpose of considering the above-referenced Petition for Declaratory Statement. Notice of the Petition was published on December 31, 2009, 2009, in the Florida Administrative Weekly, Volume 35, No. 52. No comments by interested persons were received. Neither Petitioner nor its lawyer was present at the meeting. The Board was represented by Allison Dudley, Assistant Attorney General. In its Petition, Peachtree Casualty Insurance Company (Petitioner) asks whether an osteopathic physician who employs a massage therapist needs an establishment license and whether certain medical services are considered the practice of massage.

**FINDINGS OF FACT**

1. Petitioner is a company that provided Personal Injury Protection benefits to an individual following an automobile accident.
2. Petitioner is not a massage therapist, massage establishment or healthcare provider.

**CONCLUSIONS OF LAW**

3. Section 120.565(1), Florida Statutes, (2010 ) allows any substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

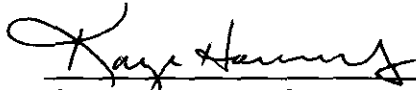
4. Petitioner is not a substantially affected person and therefore does not have standing to petition the Board for a Declaratory Statement regarding the statutes and rules regulating the profession of massage therapy.

WHEREFORE, based on the foregoing, the Board hereby finds that Petitioner's Petition for Declaratory Statement is Denied.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

**DONE AND ORDERED** this 5 day of April, 2010.

BOARD OF MASSAGE THERAPY



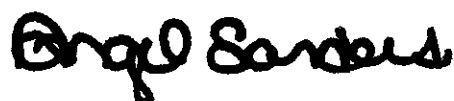
\_\_\_\_\_  
Kaye Howerton, Executive Director  
*on behalf of Karen Ford, LMT Chair*

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Peachtree Casualty Insurance Company c/o Gwendy Cook, P.O. Box 6451, Marietta, Georgia 30064; Robert Lyerly, Masten Lyerly , Peterson and Denbo, 189 South Orange Avenue, Suite 1450, Orlando, Florida 32801; and by interoffice mail to: Allison Dudley, Assistant Attorney General and Jonny Booth, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050, on this 16 day of April, 2010.



**Deputy Agency Clerk**

PEACHTREE CASUALTY INSURANCE COMPANY,  
c/o Gwendy Cook  
Post Office Box 6451  
Marietta, Georgia 30065  
(770) 438-4017/office  
(770) 438-4013/fax

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: *Angela Baxton*  
DATE 12/8/09

Petitioner.

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**PETITION FOR DECLARATORY STATEMENT BEFORE  
FLORIDA'S BOARD OF MASSAGE THERAPY**

Petitioner, PEACHTREE CASUALTY INSURANCE COMPANY ("PEACHTREE"),  
by and through its undersigned counsel, and pursuant to Florida Statute §120.565 and Florida  
Administrative Code 28.1005, seeks declaratory statements from Florida's Board of Massage  
Therapy and in support thereof states:

**FACTS:**

1. PEACHTREE issued a policy of insurance to an Insured providing \$10,000 in PIP benefits with a \$1,000 deductible.
2. The Insured was involved in a motor vehicle accident.
3. The Insured began treating at a clinic purportedly owned by an osteopathic physician. This clinic did not have a massage establishment license at the time of the Insured's treatments.
4. The clinic allegedly provided the Insured with medical services, which included:
  - a. Hot/Cold Packs (CPT Code 97010);
  - b. Mechanical Traction (CPT Code 97012);
  - c. Electrostimulation, unattended (CPT Code 97014);
  - d. Ultrasound (CPT Code 97035);
  - e. Manual Therapy (CPT Code 97140);

- f. Hydrotherapy (CPT Code 97039); and
- g. Spinal Manipulation, 3-4 regions (CPT Code 98941).

5. The above referenced medical services were allegedly rendered by a Licensed Massage Therapist.

6. Florida's No-Fault law provides that an insurer is not required to pay Personal Injury Protection ("PIP") benefits to a medical provider that does not "lawfully render" the medical services/treatments.

7. Florida Statute §627.732(11) defines "lawful" or "lawfully" as "in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical services or treatment."

8. PEACHTREE is in doubt as to whether the subject medical services complied with applicable Florida statutory and administrative law. Compliance with Florida statutory and administrative law is required in order for the subject medical services to be considered for reimbursement under Florida's No-Fault law.

9. PEACHTREE'S immunity, power, privilege, or right is dependent on the facts or the law applicable to the facts outlined herein.

10. PEACHTREE is not seeking legal advice from Florida's Board of Massage Therapy and the request is not propounded out of curiosity

*Florida Statutes and Administrative Codes Under Which Declaration is Sought*

11. Florida Statute §480.033(3) defines "massage" as:

The manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation."

12. Florida Statute §480.043(1) states:

No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the board.

13. Florida Administrative Code 64B7-26.001(2) defines “establishment” as a “site or premise, or portion thereof, wherein a licensed massage therapist practices massage for compensation.”

14. Florida Administrative Code 64B7-26.002(1) requires each “establishment” to obtain a license from Florida’s Department of Health.

**REQUEST FOR DECLARATORY STATEMENT #1:**

15. Whether a medical clinic, owned by an osteopathic physician, that employs a Licensed Massage Therapist to practice massage for compensation is considered an “establishment” under Florida Administrative Code 64B7-26.001(2).

**REQUEST FOR DECLARATORY STATEMENT #2:**

16. Whether a medical clinic, owned by an osteopathic physician, that employs a Licensed Massage Therapist to practice massage for compensation is required to have a Massage Establishment License in accordance with Florida Statute §480.043(1) and Florida Administrative Code 64B7-26.002(1).

**REQUEST FOR DECLARATORY STATEMENT #3:**


17. Whether a Licensed Massage Therapist can perform massage therapy and other medical services/treatments, in accordance with the Florida Statutes and Florida Administrative Code, at a medical clinic that lacks a massage establishment license but is owned by an osteopathic physician.

**REQUEST FOR DECLARATORY STATEMENT #4:**

18. Whether Florida's Board of Massage Therapy considers the following medical services/treatments to be a form of "massage" as is defined in Florida Statute §480.033(3):

- a. Hot/Cold Packs (CPT Code 97010);
- b. Mechanical Traction (CPT Code 97012);
- c. Electrostimulation, unattended (CPT Code 97014);
- d. Ultrasound (CPT Code 97035);
- e. Manual Therapy (CPT Code 97140);
- f. Hydrotherapy (CPT Code 97039); and
- g. Spinal Manipulation, 3-4 regions (CPT Code 98941).

Respectfully Submitted this 4<sup>th</sup> day of December, 2009.

  
**ROBERT M. LYERLY, ESQUIRE**  
Florida Bar No. 145490  
Masten, Lyerly, Peterson & Denbo, LLC  
189 South Orange Avenue, Suite 1450  
Orlando, Florida 32801  
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Facsimile: (407) 455-5136  
Attorney for Defendant