

STATE OF FLORIDA
BOARD OF MEDICINE

By: Angel Sanders
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY STATEMENT OF
GMAC INDEMNITY CORPORATION

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the Board) on December 2, 2011, in Orlando, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on October 14, 2011, in Vol. 37, No. 41, in the Florida Administrative Weekly. Randall A. Wainoris, Esq., appeared on behalf of the Petitioner.

The petition filed on behalf of GMAC Indemnity Corporation (hereinafter GMAC or Petitioner) inquired as to what extent may a Licensed Massage Therapist operating in a clinic with no direct supervision from a medical doctor or chiropractor other than a written prescription for therapy, assess a patient for medical necessity and perform and bill for physical therapy modalities.

FINDINGS OF FACTS

1. The Petitioner, GMAC Indemnity Corporation, is an auto insurance company that operates in the state of Florida.
2. The Petitioner alleges that the Board's response to its inquiry would be helpful to GMAC in adjusting the claims outlined in its petition and other similar claims.
3. The facts outlined in GMAC's petition and attachments are hereby adopted and incorporated herein by reference as the findings of fact by the Board.

CONCLUSIONS OF LAW

1. The Board of Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

3. Section 120.565, Florida Statutes, reads as follows:

120.565. Declaratory statement by agencies

(1) Any substantially affected person may 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.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action

4. Rule 28-105.001, Florida Administrative Code, reads as follows:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.

5. The Board declines to issue a declaratory statement in response to GMAC's petition for multiple reasons. First, it has failed to demonstrate that it is a substantially affected person as set forth in Section 120.565(1), Florida Statutes.

6. Second, the Board is being asked to opine as to the scope of practice of Licensed Massage Therapists. To do so, the Board must necessarily interpret and apply provision of

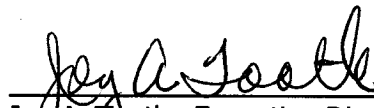
Chapter 480, Florida Statutes, also known as the Massage Practice Act. Since the Board has no authority to apply, interpret, or enforce Chapter 480, it is without authority to issue the requested opinion.

7. Finally, GMAC inquires as to whether others are practicing within their scope of practice as set forth in Chapter 480, Florida Statutes. Since a declaratory statement is not the appropriate means for determining the conduct of another person, the Board declines to respond to its inquiry.

8. Based on the foregoing, the Board hereby **DENIES** GMAC Indemnity Corporation's petition for declaratory statement.

DONE AND ORDERED this 26th day of January, 2012.

BOARD OF MEDICINE


Joy A. Tootle, Executive Director
For George Thomas, M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Scott W. Dutton and Randall A. Wainoris, Counsel for GMAC Indemnity Corporation, Dutton Law Group, P.A., P.O. Box 260697, Tampa, Florida 33685; by email to: Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050, ed.tellechea@myfloridalegal.com; and Nicholas Romanello, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, nick.romanello@doh.state.fl.us; on this 27th day of January, 2012.



Deputy Agency Clerk