

By: Angel Sanders
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

**IN RE: PETITION FOR DECLARATORY
STATEMENT**

MELINDA CUMBAA, PT, MS

FINAL ORDER

This matter came before the Board of Massage Therapy, at a duly noticed public meeting of the Board of Massage Therapy on October 29, 2010 in Tampa, Florida, to consider a Petition for Declaratory Statement pursuant to Section 120.565, Florida Statutes, and Rule 64B8-40.003(2), Florida Administrative Code, in response to the Petition for Declaratory Statement filed by Melinda Cumbaa, PT, MS on September 2, 2010 (attached hereto as exhibit A). The Notice of Petition for Declaratory Statement was published on October 1, 2010, in Vol. 36, No. 39, of the Florida Administrative Weekly.

Petition

Petitioner, Melinda Cumbaa, seeks review of Rule 64B7-32.003, Florida Administrative Code pertaining to the clinical practicum hours that required by the rule. Specifically, Petitioner inquires as to whether Physical Therapy Clinical hours at Gulf Coast Community College may substitute for the required massage therapy clinical hours specified in Rule 64B7-32.003

The Law of Declaratory Statements

Section 120.565, Fla. Stat., provides the authority for administrative agencies to issue declaratory statements:

A declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances.

This provision has been incorporated into the Florida Uniform Rules of Administrative Procedure 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 to resolve questions or doubts as to how the statute, 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.

Rule 28-105.001, F.A.C.

Thus, the use of a declaratory statement is very limited in scope. It is intended to determine a narrow range of issues which have a direct effect on the petitioner's particular set of circumstances and not as a means to obtain statements of policy that would apply to a broad class of persons.

Findings of Fact

1. The Board of Massage Therapy 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. Petitioner, Melinda Cumba, is an instructor of physical therapy at Gulf Coast Community College, which is located at 5230 West US Highway 98 in Panama City, Florida.
4. The Massage Therapy certificate program at Gulf Coast Community College is offered strictly for graduates of a physical therapy or a physical therapy assistant program.
5. Rule 64B7-32.003 Minimum Requirements for Board Approved Massage Schools

requires 125 hours of clinical practicum.

6. Graduates of a physical therapy or a physical therapy complete at least 720 hours in various clinical rotations only a few of which relate to the practice of massage therapy.

7. The clinical practicum required by Rule 64B7-32.003, F.A.C. is specifically directed to training in the modalities of massage therapy which are distinct and do not specifically correlate with that offered at the physical therapy program at Gulf Coast Community College.

Conclusions of Law

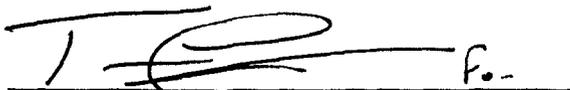
8. Based on the foregoing, the Board of Massage Therapy issues a declaratory statement concerning the matters raised in the Petition responding to the declaratory statement in the negative.

9. The Board is of the opinion that the physical therapy clinical hours as presented in the Petition and attachments to the Petition do not satisfy the clinical practicum requirement under Rule 64B7-32.003, F.A.C.

10. The Board responds only to the question propounded by the Petitioner and only addresses issues regarding the practice of massage therapy. It does not in any way address issues of corporate governance or other such issues that the Board does not possess the requisite jurisdiction to entertain.

DONE AND ORDERED this 29th day of December, 2010.

BOARD OF MASSAGE THERAPY



ANTHONY R. JUSEVITCH
EXECUTIVE DIRECTOR
For KAREN G. FORD, CHAIR

NOTICE OF APPEAL RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER AND FINAL AGENCY ACTION IF NO REQUEST FOR A HEARING IS RECEIVED BY THE BOARD ON OR BEFORE THE TWENTY-FIRST DAY AFTER THE APPLICANT'S RECEIPT OF THE ORDER. THE APPLICANT MAY REQUEST A HEARING BY FILING AN APPROPRIATE PETITION WITH THE EXECUTIVE DIRECTOR OF THE BOARD AT 4052 BALD CYPRESS WAY, BIN # C-06, TALLAHASSEE, FLORIDA 32399-3256. THE APPLICANT MAY PETITION FOR A HEARING INVOLVING DISPUTED ISSUES OF MATERIAL FACT BEFORE AN ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTION 120.57 (1), FLORIDA STATUTES, OR FOR A HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT PURSUANT TO SECTION 120.57 (2) FLORIDA STATUTES.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Melinda Cumbaa, PT MS, Gulf Coast Community College, 5230 West US Highway 98, Panama City, Florida and by interoffice mail to: Jaime Doyle Liang, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; on this 6th day of January, 2010.

Angel Sanders
Deputy Agency Clerk

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OSTEO UNIT

TO: Cassandra G. Pasley, BSN, JD, Chief
Bureau of Health Care Practitioner Regulation

FROM: Anthony Jusevitch, Executive Director,
Florida Boards of Osteopathic Medicine, Massage Therapy,
Acupuncture, Speech Language Pathology & Audiology and
Council on Licensed Midwifery

DATE: Wednesday, December 29, 2010

RE: Delegation of Authority

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During my absence December 27 through January 4, 2010, Taimour Chaudhry, Regulatory Supervisor, is delegated authority for the board office.

Thank you,

Anthony Jusevitch