

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MASSAGE THERAPY**

**IN RE: THE PETITION FOR DECLARATORY
STATEMENT REQUESTED DAR MIKULA,
DIRECTOR, FLORIDA SCHOOL OF MASSAGE**

FINAL ORDER

THIS MATTER came before the Board of Massage (Board) pursuant to Section 120.565, Florida Statutes. At a duly-noticed public meeting held on March 14, 2011, by teleconference, the Board considered the above-referenced Petition for Declaratory Statement. The Petition was filed with the Department of Health on January 31, 2011. The petition was noticed in the Florida Administrative Weekly in Volume 37, No. 07, on February 18, 2011. The Petitioner requests that the Board issue a Declaratory Statement interpreting the massage therapy practice act and rules as applied to Petitioner and other licensees. More specifically, Petitioner requests that the Board state the formal sequence for obtaining continuing education hours for a licensee who must take less than twenty-four (24) hours of continuing education for biennial renewal of the licensee as required by Rule 64B7-28.009(1)-(3), F.A.C. Petitioner was present without counsel. Having considered the Petition and relevant statutes and rules, the Board issues the following statement:

FACTUAL FINDINGS

1. The Petition was duly filed and noticed in the Florida Administrative Law Weekly.
2. The Petition is attached hereto and incorporated herein by reference.
3. The Petitioner is a Florida licensed massage therapist and Director of the Florida School of Massage and has standing to file a petition for declaratory statement.

4. The Petitioner seeks a declaratory statement from the Board as to formal sequence for obtaining continuing education hours for a licensee who must take less than twenty-four (24) hours of continuing education for biennial renewal of the licensee as required by Rule 64B7-28.009(1)-(3), F.A.C. or through pro bono services pursuant to Rule 64B7-28.0095, F.A.C.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565 and Chapter 486, Florida Statutes.

2. The Board grants the petition and answers the request for Declaratory Statement to state that for licensees required to take less than twenty-four (24) hours of continuing education credits at the time of renewal must first fulfill the statutory requirements of Medical Errors coursework pursuant to Florida Statutes §456.013(7) and HIV/AIDS coursework pursuant to Florida Statutes §456.034. Then licensees may take any Board approved continuing education courses, including pre-approved pro bono hours, to fulfill the remaining continuing educational requirements of Rule 64B7-28.009(1)-(3), F.A.C.

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

DONE AND ORDERED this 19 day of April,
2011.

BOARD OF MASSAGE THERAPY



ANTHONY R. JUSEVITCH
EXECUTIVE DIRECTOR
For KAREN G. FORD, 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 Business and Professional Regulation 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 Notice has been provided by Certified Mail to: **Dar Mikula, Director, Florida School of Massage, 6421 SW 13th Street, Gainesville, Florida 32608**, and by hand/ interoffice delivery to Jaime Doyle Liang, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050. this 20th day of April 20, _____, 2011.



Deputy Agency Clerk

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**PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA BOARD
OF MASSAGE THERAPY**

Petitioner:

Dar Mikula, Director
Florida School of Massage
6421 SW 13th Street
Gainesville, FL 32608
p. 352.378.7891
f. 352.381.8808
email: Dar@floridaschoolofmassage.com
LMT: MA14016 (1992)

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Angel Sanders**
DATE **JAN 31 2011**

Regarding:

Florida Administrative Code, Rule 64B7-28.009 Continuing Education (1,2,3)
and 64B7-28.0095 Continuing Education for Pro Bono Services (4)

Date:

January 28, 2011

Description of how the rule substantially affects petitioner:

As both a Florida-Board Approved School and an Florida-Approved Provider for Continuing Education, we need to know the order, if any, that the required Continuing Education hours in this rule (and related Pro Bono Services) need to be assigned to licensees that require 23 or less hours as required in 64B7-28.009 (1).

Further Comments:

There are exemptions for Laws and Rules, and Ethics, for Initial Licensure in 28.009(1), statutory requirements (HIV/AIDS Section 456.034, F.S.), live/hands-on requirements in 28.009 (3)(a), a prevention of medical errors course requirement in (3)(b), an "other" category in (3)(c), and a Pro Bono Services allowance in 28.0095. These rules are missing direction from the Board on how a licensee with less than a biennium of licensure (23 or less required hours) should proceed in "right order" in obtaining their required Continuing Education hours.

Our school knows the Board's "preferential sequence" but there is nothing formally written in this Rule for Florida LMTs to follow. Please advise.

Respectfully,


Dar Mikula, Director
Florida School of Massage