

STATE OF FLORIDA  
BOARD OF NURSING

FILED DATE **AUG 11 2015**  
Department of Health

By Angel Sanders  
Deputy Agency Clerk

IN RE: THE PETITION  
FOR DECLARATORY  
STATEMENT OF  
ANGELA LIND

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**FINAL ORDER**

THIS CAUSE came before the Board of Massage Therapy (hereinafter Board) pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, at a duly-noticed meeting in Kissimmee, Florida on July 17, 2015, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed on behalf of ANGELA LIND (hereinafter Petitioner). Having considered the petition, the arguments submitted by counsel for Petitioner, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

**FINDINGS OF FACT**

1. This petition was noticed by the Board in Vol. 41, No. 112, dated June 10, 2015 of the Florida Administrative Register.
2. Petitioner, ANGELA LIND, is a massage therapist licensed to practice in the State of Florida, having license number MA 45645.
3. Petitioner seeks a declaratory statement regarding Section 456.054 and 817.505(1)(a) and (b), Florida Statutes.
4. Petitioner inquires concerning working as an independent contractor with mobile massage therapy companies.
5. Petitioner does not describe the proposed compensation arrangements, but provides a hypothetical.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The petition filed in this cause is not in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

WHEREFORE, the Board dismisses the petition.

DONE AND ORDERED this 10 day of August, 2015.

BOARD OF MASSAGE THERAPY



Christy Robinson, Executive Director  
for Bridget Burke-Wammack, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by email to Petitioner ANGELA LIND, [imanyelina@gmail.com](mailto:imanyelina@gmail.com), Donna Oxford, Paralegal Specialist, [Donna.Oxford@myfloridalegal.com](mailto:Donna.Oxford@myfloridalegal.com) this 11<sup>th</sup> day of August, 2015.

also mailing  
to 10852 NW 30<sup>th</sup> Pl.  
Sunrise, FL 33322  
(Leids Address)

**Angel Sanders**  
**Deputy Agency Clerk**

1401-47091

PETITION FOR DECLARATORY STATEMENT

PETITION FOR DECLARATORY STATEMENT BEFORE  
THE FLORIDA BOARD OF MASSAGE THERAPY

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK: *Bridget Cortes*  
JUN 01 2015  
DATE \_\_\_\_\_

Information of the Petitioner:

Angela Lind

Licensed Massage Therapist

Florida License Number# MA45645

Home Address: 10852 NW 30<sup>th</sup> Sunrise, FL 33322

Mobile number: (786) 290-7055

E-mail: [imanyelina@gmail.com](mailto:imanyelina@gmail.com)

Statutory provisions on which declaratory statement is sought:

- A. Section 456.054 Fla. Stat.
- B. Sections 817.505 (1) (a) and (1) (b) Fla. Stat.

May 27th, 2015

Florida Department of Health

4052 Bald Cypress Way

Tallahassee, FL 32399

Dear Sir or Madam:

Pursuant to 120.565, Florida Statutes, and Rule Chapter 28-105, as a Massage Therapist licensed in the State of Florida under Chapter 480 F.S., I respectfully request that the Florida Department of Health, through the Florida Board of Massage Therapy, grant my Petition for Declaratory Statement and provide their opinion as to the applicability of Chapters 456.054 and 817.505 to my circumstances.

Description of how the statutes affect the petitioner:

As a Licensed Massage Therapist and a health care provider in the state of Florida, I seek a declaratory statement with regard to sections 456.054 and 817.505 (1)(a)-(1)(b) of the Florida Statutes as they pertain to apply to my profession and personal set of circumstances. I consider myself a substantially affected person due to the fact that the failure to comply with these sections may result in disciplinary action by the board.

I have worked on my own for the last 9 years and I have the possibility to increase my income by working as an independent contractor with three different mobile massage therapy companies. These companies have built a strong marketing structure and have the ability to generate many leads interested in getting massage therapy at their home, office or hotel. The company gets the customer's information, then they refer me to the customer and I would travel to the customer's place to give the massage. After I finish in performing the massage, the company will compensate me by giving me a percentage of the fee that the customer paid directly to the company for the massage.

Example of arrangement: "XYZ" massage based company charges \$100 dollars for one hour massage to their customers. "XYZ" hires me as an independent contractor and compensates me with 60% of the fee their customers pay to the company for the massage. In this case, I will get paid with \$60 dollars by "XYZ" company for giving one hour massage to their customer.

Does this type of arrangement violate the provisions of 456.054 and 817.505 (1)(a-b) Fla. Stat.?

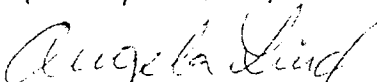
Further Comments:

I would respectfully request that the board consider expanding its statement and also express their opinion pertaining to applicability of the statute when the compensation is paid by the therapist. It would help to clarify this statute for me even more so I can proceed with my endeavors to provide massage therapy services within the provisions of the laws and rules. Many opportunities available in the marketplace are similar in nature as far as independent contractor status and direction of payment. The outcome of decision of the board to this petition will affect the way I decide to engage working with other companies.

I believe the Board of Massage Therapy does not have authority to determine independent contractor status and I am not requesting that the board address that issue.

I would be happy to attend a meeting to personally answer any questions and disclose the identity of the companies I have mentioned above.

Respectfully submitted,

 09/27/2015  
Angela Lind LMT Lic#MA45645

# The Florida Senate

## 2012 Florida Statutes

### Title XXXII

REGULATION OF PROFESSIONS  
AND OCCUPATIONS

### Chapter 456

HEALTH PROFESSIONS AND  
OCCUPATIONS: GENERAL  
PROVISIONS

### Entire Chapter

### SECTION 054

**Kickbacks prohibited.**

#### **456.054 Kickbacks prohibited. —**

(1) As used in this section, the term “kickback” means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

(3) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

**History.** — s. 8, ch. 92-178; s. 2, ch. 96-152; s. 79, ch. 97-261; s. 8, ch. 99-204; s. 78, ch. 2000-160; s. 6, ch. 2006-305.

**Note.** — Former s. 455.237; s. 455.657.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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## The 2014 Florida Statutes

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Title XLVI  
CRIMES

Chapter 817  
FRAUDULENT PRACTICES

[View Entire Chapter](#)

### 817.505 Patient brokering prohibited; exceptions; penalties.—

- (1) It is unlawful for any person, including any health care provider or health care facility, to:
- (a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
  - (b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
  - (c) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or
  - (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).
- (2) For the purposes of this section, the term:
- (a) "Health care provider or health care facility" means any person or entity licensed, certified, or registered; required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health; any person or entity that has contracted with the Agency for Health Care Administration to provide goods or services to Medicaid recipients as provided under s. 409.907; a county health department established under part I of chapter 154; any community service provider contracting with the Department of Children and Families to furnish alcohol, drug abuse, or mental health services under part IV of chapter 394; any substance abuse service provider licensed under chapter 397; or any federally supported primary care program such as a migrant or community health center authorized under ss. 329 and 330 of the United States Public Health Services Act.
  - (b) "Health care provider network entity" means a corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.
  - (c) "Health insurer" means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan as defined in s. 624.031, any health maintenance organization authorized to transact business in the state pursuant to part I of chapter 641, any prepaid health clinic authorized to transact business in the state pursuant to part II of chapter 641, any prepaid limited health service organization authorized to transact business in this state pursuant to chapter 636, any multiple-employer welfare arrangement authorized to transact business in the state pursuant to ss. 624.436-624.45, or any