

FILED DATE AUG 30 2017

Department of Health

By [Signature]STATE OF FLORIDA
BOARD OF MASSAGE THERAPYIN RE: THE PETITION
FOR DECLARATORY
STATEMENT OF
SINEAD E. FERGUSONFINAL 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 Orlando, Florida on April 21, 2017, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed on behalf of SINEAD E. FERGUSON (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. 43, No. 52, dated March 16, 2017 of the Florida Administrative Register.
2. Petitioner, SINEAD E. FERGUSON, is a massage therapist licensed to practice in the State of Florida, having license number MA 636615.
3. Petitioner operates Wellington Deep, a licensed massage establishment.
4. Wellington Deep employs several licensed massage therapists.
5. Petitioner inquires if it is within the scope of the practice of massage therapy, as defined in §480.033(3), Florida Statutes, to use non-ablative lasers.
6. Petitioner refers to the type of lasers about which she inquires as Class III lasers, which are able to penetrate the body.

7. At paragraph 9 of the petition, Petitioner states that it is "generally considered" that Class III lasers are capable of providing health benefits to humans.

8. At paragraph 10 of the petition, Petitioner states that it is "generally considered" that due to their extremely low power output, Class III lasers are limited to conditions "in or just below the skin."

9. Petitioner provides no supporting information concerning the "general" considerations, provides no information of the purpose for using the laser, and provides insufficient information about the various classes of lasers.

CONCLUSIONS OF LAW

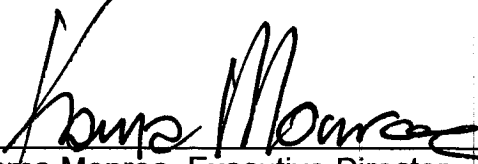
1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The petition filed in this case does not provide sufficient information for a determination by the Board.

WHEREFORE, the Board hereby dismisses the petition.

DONE AND ORDERED this 29 day of August, 2017.

BOARD OF MASSAGE THERAPY


Kama Monroe, Executive Director
for Lydia Nixon, Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, the parties 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 and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to Petitioner SINEAD E. FERGUSON, 17418 35th Place North, Loxahatchee FL 33470, and by interoffice mail to Donna Oxford, Paralegal Specialist, Donna.Oxford@myfloridalegal.com this 30th day of August, 2017.

Brygel Sanders
Deputy Agency Clerk

Sinead E. Ferguson
17418 35th Pl N
Loxahatchee, Florida 33470
Work Telephone: 561-500-3337 (No Facsimile Number)
Cell Number: 561-601-8577

- And -

Wellington Deep LLC.
12160 South Shore Blvd., Unit 108
Wellington, Florida 33414
Telephone: 561-500-3337 (No Facsimile Number)
Contact: David Brennen, Business Development Manager
Cell Number: 561-701-3150

Petitioners

OFFICE OF THE CLERK
17 MAR - 9 PM 2:58
DEPARTMENT OF HEALTH

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

Petitioners, SINEAD E. FERGUSON ("Ferguson") and WELLINGTON DEEP LLC. ("Wellington Deep"), pursuant to Florida Statute §120.565 and Florida Administrative Code §28-105, seek Declaratory Statements from Florida's Board of Massage Therapy, and in support of this Petition state as follows:

FACTS

1. Ferguson is a Licensed Massage Therapist in the State of Florida, holding Florida licence no. MA63615.
2. Wellington Deep is a Licenced Massage Establishment holding Florida licence no. MM30752, and is Ferguson's limited liability company establishment through which she operates her massage practice.

3. Wellington Deep operates a therapeutic massage establishment in Wellington, Florida. In addition to Ferguson, Wellington Deep employs several other Florida-licensed massage therapists who provide massage services at and from Wellington Deep's premises.

4. The Petitioners are uncertain as to whether the use of certain non-ablative laser devices as an aid in the provision of massage services lies within the scope of practice as defined by Florida Statute §480.033(3), and seek clarification from the Board on this point, namely whether that section applies to allow the use of such devices by trained and Florida-licensed massage therapists as an aid in the provision of massage services, as more fully described below.

5. The Petitioners will both be substantially affected by the Board's determination with respect to the subject of this Petition, in that the Board's determination will clarify whether they are allowed to utilize these devices as an aid in the provision of massage services, or not.

6. The Petitioners understand that the use of laser devices for ablative purposes or for the removal of hair is separately regulated and is not within the scope of massage practice as defined by Florida Statute §480.033(3), and wish to be clear that such uses are not included within the ambit of, or as part of this Petition.

STATUTORY PROVISIONS ON WHICH DECLARATORY STATEMENT IS SOUGHT

7. The relevant statutory provision on which a Declaratory Statement is sought is Florida Statute §480.033(3), which provides:

480.033 Definitions.—As used in this act:

(3) "Massage" means 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.

8. As noted above, the statute substantially affects the Petitioners because it determines the scope of practice that may be lawfully undertaken by massage therapists. More particularly, if the use of non-ablative laser devices as an aid in the provision of massage services lies within the scope of practice as defined by the statute, the Petitioners intend to invest in the appropriate equipment, be trained and to train or obtain training as is appropriate for their employed Florida-licensed therapists in the proper use of such devices, and intend to utilize those devices in the provision of services to their clients in appropriate circumstances. If the use of such devices does not lie within the scope of massage practice as defined by the statute, the Petitioners will not make those capital outlays for the relevant equipment and training, and will not use the devices in the course of their and their employees' massage practices.

DISCUSSION

9. Therapeutic lasers are divided into four classifications, based on a number of technical factors, including wavelength and output power. It is generally considered that Class III (otherwise known as "cold lasers" or "low-level lasers") and Class IV (otherwise known as "high-power lasers") have been demonstrated to be capable of providing health benefits to humans. For the purposes of this Petition, Class IV lasers referred to include only non-ablative therapeutic lasers, and are not to be confused with ablative, hair-removal, or Class IV surgical lasers.

10. It is also generally considered that due to their extremely low power output and limited ability to penetrate the body, the benefits of Class III lasers are limited to conditions in or just below the skin, and require lengthy application to be effective. By contrast, due to their much higher power output, Class IV lasers are able to penetrate deeper into the body, reaching the majority of major muscles and soft tissues, in a considerably shorter period of time.

11. It is submitted that a laser in this context is an electrical device. Among other definitions, electrical devices are variously defined as (i) devices that use or generate electricity and transform it into another form of energy, such as motion, heat or light, and (ii) devices that produce or are powered by electricity.

REQUEST FOR DECLARATORY STATEMENT #1

12. Whether the use by a trained Florida-licensed massage therapist of laser devices as an aid in the provision of massage services lies within the scope of massage practice as defined by Florida Statute §480.033(3).

REQUEST FOR DECLARATORY STATEMENT #2

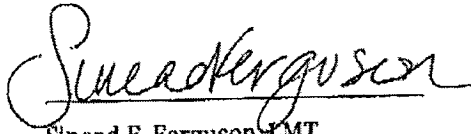
13. Whether the use by a trained Florida-licensed massage therapist of Class III laser devices as an aid in the provision of massage services lies within the scope of massage practice as defined by Florida Statute §480.033(3).

REQUEST FOR DECLARATORY STATEMENT #3

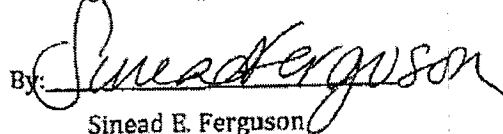
14. Whether the use by a trained Florida-licensed massage therapist of non-ablative laser devices as an aid in the provision of massage services lies within the

scope of massage practice as defined by Florida Statute §480.033(3).

Respectfully submitted this 8th day of March, 2017.


Sinead E. Ferguson, LMT

Wellington Deep LLC

By: 
Sinead E. Ferguson