

**The Insurance Federation of Pennsylvania, Inc.**

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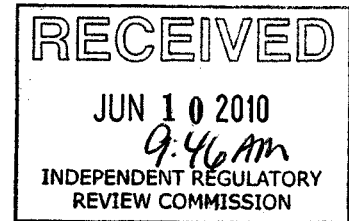
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JUN 07 2010

**John R. Doubman**  
Secretary & Counsel

June 7, 2010

Ms. Judy Harner, Board Administrator  
State Board of Massage Therapy  
P.O. Box 2649,  
Harrisburg, PA 17105-2649



**Re: Proposed Regulation 16A-721  
Massage Therapy**

Dear Ms. Harner:

The Insurance Federation of Pennsylvania ("Federation") on behalf of its member insurers writing workers compensation, personal lines and health insurance has substantial concerns about the captioned regulation.

In particular, the proposed regulation may be construed as inconsistent with the enabling law, Act 118 of 2008 (P.L. 1438, October 9, 2008). Further, it may be read as undercutting current legal precedent and practice respecting the eligibility of massage therapy for reimbursement by workers compensation and personal lines insurers.

Moreover, to practitioners unacquainted with the law and the background of these issues, the regulation may lead to the administration of unauthorized modalities. In addition, as presently written, the regulation could be the basis of inappropriate and inefficient billing practices.

Section 17 of Act 218, 63 P.S. Section 627.17 addresses specifically the effect of licensure with respect to coverage under the Motor Vehicle Financial Responsibility Law and the Workers Compensation Act. It notes licensure

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"shall not be construed as requiring new or additional third party reimbursement or otherwise mandating coverage . . . " under those acts.

Additionally, legal precedent such as the Superior Court case of Keiper v. Progressive decided February 9, 2009 has been consistent that massage therapy services need not be reimbursed under the MVRFL.

It is clear, of course, the licensing regulation of the Board of Massage Therapy cannot expand or diminish a provision of Act 218. However, the Federation believes the Scope of Practice provisions in Section 20.41 are so broad and vague massage therapists might unintentionally or intentionally construe them as putting some of their activities into categories which are recognized for reimbursement under these insurance coverages.

Section 20.41(a) states massage therapists "treat" soft tissue manifestations of the human body. "Treat" is a very strong word. Indeed, one problem is Section 20.41(b) then states physical therapy does not include "diagnosis and treatment [emphasis mine] of impairment, illness, disease or disability." The use of "treat" without condition or qualification seems to set up an overstatement of the role of the massage therapist which can cause problems.

The Pennsylvania Physical Therapy Association in its comments notes the same difficulty and suggests the most direct solution. The Association suggests using conditioning words as to the level of treatment to be achieved ("tonic relief") wherever the word "treatment" is utilized. In this respect, the Federation endorses the comments of the Association and adopts them as if set out herein.

Further, the Federation suggests amplifying this section to make such distinctions clearer. In that connection, the Federation recommends the Board include for the guidance of its licensees the statutory limitation from Section 17 of the Act to the effect that no description of services in the regulation, however much they appear to resemble or duplicate services performed by physical therapists or

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chiropractors can qualify the massage therapy services for workers compensation of first party medical benefits coverage.

We appreciate your consideration of the Federation's comments. If the Federation can amplify its views or be of assistance in improving the regulation, please contact the undersigned.

Respectfully yours,

John R. Doubman

cc: The Honorable Robert M. Tomlinson, Majority Chairman,  
Consumer Protection & Professional Licensure  
The Honorable Lisa M. Boscola, Minority Chairman,  
Consumer Protection & Professional Licensure  
The Honorable Michael McGeehan, Majority Chairman,  
Professional Licensure  
The Honorable Julie Harhart, Minority Chairman,  
Professional Licensure