

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	1/7/2010
File #	2010-00003

**STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD**

**IN RE: THE PETITION FOR DECLARATORY
STATEMENT OF RODNEY S. FISCHER**

DS 2009-064

**FINAL ORDER
DECLARATORY STATEMENT**

THIS MATTER came before the Construction Industry Licensing Board (Board) pursuant to section 120.565, Florida Statutes and Chapter 28-105, Florida Administrative Code. At a duly-noticed public meeting held on November 13, 2009 in Orlando, Florida, the Board considered Rodney S. Fisher's Petition for Declaratory Statement. The Petition was filed with the Department of Business and Professional Regulation on October 1, 2009. Notice of the Petition was published on October 30, 2009, in the Florida Administrative Weekly. Written comments were received from the Florida Swimming Pool Association and were considered by the Board. Petitioner, was present at the meeting. Having considered the Petition and relevant statutes and rules, the Board states the following:

FINDINGS OF FACT

1. The facts considered by the Board are as alleged in the Petition with no

further investigation by the Board. The Petition is attached hereto and incorporated by reference.

2. Petitioner is the executive director of the Pinellas County Construction Licensing Board.

3. The Petitioner receives inquiries and questions regarding whether a swimming pool/spa servicing contractor may legally perform the conversion of direct suction public/commercial pools to gravity-fed collection tank system pools in accordance with the amended Florida Public Swimming Pool Code requirements in Rule 64E-9, Florida Administrative Code.

4. The work in question requires the removal of concrete decks, penetrations of the pool structure, installation of piping arrangements, collection tanks, filters, and disinfectant devices of a new kind. The work may also include cutting or penetrating the pool shell.

CONCLUSIONS OF LAW

5. The Construction Industry Licensing Board has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

6. Petitioner is substantially affected, as required by section 120.565, Florida Statutes.

7. Section 489.105, Florida Statutes provides the scope of license for swimming pool contractor classifications.

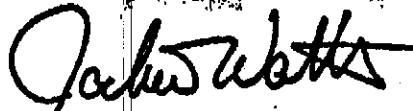
8. The Board finds that:

A. A swimming pool/spa servicing contractor cannot make any modifications of a swimming pool concrete structure.

B. A swimming pool/spa servicing contractor cannot change a filtration system from a direct suction type to a gravity fed collection tank type system.

This Final Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 31st day of December, 2009.



JACQUELINE A. WATTS, Chair
Construction Industry Licensing Board.

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 was furnished by U.S. Mail to: Rodney S. Fishcer, Executive Director, 12600 Belcher Road, Suite 102, Largo, Florida 33773; and by interoffice mail to Daniel Biggins, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, and the Construction Industry Licensing Board, 1940 North Monroe Street, MS#N14, Tallahassee, Florida 32399-1039, this 7th day of January, ~~2009~~ 2010.

Brandan M. Nichols

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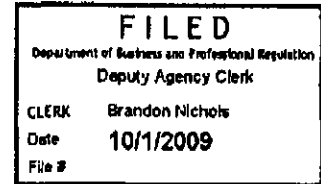
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**Petition for Declaratory Statement
Before the
Florida Construction Industry Licensing Board**

Petitioner:

Rodney S. Fischer, Executive Director
Pinellas County Construction Licensing Board
12600 Belcher Road, Suite 102
Largo, Florida 33773
(727) 536-4720 office
(727) 538-4797 fax

DS 2009-064

This Petition for a Declaratory Statement is related to Chapter 489, Part 1, Florida Statutes, and more specifically to 489.105 (3)(l).

Recent rule changes in the Florida Public Swimming Pool Code, (64E-9, FAC) requires that any existing public/commercial swimming pools and spa pools with direct suction type piping, filtration and circulation systems be converted to a gravity fed collection tank type system. This work shall be completed before July 1, 2013; or non-compliant pools and spas must be closed. Successful completion of this work is far more complicated than work described in the scope of work for Swimming Pool/Spa Servicing Contractors as published in 489.105 (3)(l).

This work is not dealing with "like, similar, same as or equivalent" materials, but instead requires the removal of concrete decks, penetrations of the pool structure, installing a completely different piping arrangement and installation of a collection tank, filter, and disinfectant devices that are not similar to the obsolete system. This work can involve penetration or cutting of the swimming pool steel-reinforced concrete shell.

A parallel issue is being caused by the enforcement of the Virginia Graeme Baker Pool & Spa Safety Act that became effective in December, 2008. This Federal Law requires all public/commercial pools and spas be retrofitted with new stronger and safer main drain grates.

Simple grate replacement can be handily accomplished by Swimming Pool/Spa Servicing Contractors. However, on some pools replacement is not simple. The new main drain grate may not fit the existing main drain frame or sump and in some cases the piping is not the proper size. In these cases extensive work is required that will include removal of the main drain sump, demolition and excavation of portions of the pool concrete floor, a piping run under the pool floor and replacement of all of these components. We have serious concerns that this work is of far greater complexity than is described in the scope of work for Swimming Pool/Spa Servicing Contractors. This work should be done by contractors familiar with maintaining structural as well as watertight integrity of the pool shell.

All of this construction, regardless of the mandate being complied with, will require preparation of "engineered" drawings by a Professional Engineer. Also required is Department of Health engineering approval, as well as monitoring by the Department of Health and the "Engineer of Record." This is not service work, repair, replacement or renovation. In our opinion, it is new construction and is work that should be done by a Commercial Pool/Spa Contractor.

Inquiries and questions related to these issues are being directed to our office. Therefore, we at the Pinellas County Construction Licensing Board seek your advice so we may better advise our constituents and better enforce relevant portions of Chapter 489. There are two questions in this petition.

Question 1: "Can a Swimming Pool/Spa Servicing Contractor do work that includes penetration or modification of a swimming pool concrete structure?"

Question 2: "Can a Swimming Pool/Spa Servicing Contractor change a filtration system from a direct suction type to a gravity fed collection tank type system?"

Petitioner:

Rodney S. Fischer, Executive Director
Pinellas County Construction Licensing Board

Date: September 24, 2009