

FILED DATE FEB 28 2013

Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Angel Sandoz
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY STATEMENT OF
RICHARD H. HUBBARD, M.D., J.D.

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the Board) on February 2, 2013, in Jacksonville, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on January 7, 2013 in Vol. 39, No. 4, in the Florida Administrative Register.

The Petitioner, Richard H. Hubbard, M.D., a Florida licensed physician (hereinafter the "Petitioner"), inquires of the Board whether he may interpret neuro-diagnostic data in his California office which were developed by certified neuro-diagnostic technicians in Florida from Florida patients. The Petitioner cites to no statute, rule or order of the Board in his petition.

Section 120.565(1) and (2), Florida Statutes, reads as follows:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order of the petitioner believes may apply to the set of circumstances.

In addition, Rule 28-105.002, Florida Administrative Code, sets forth the information that must be provided in a complaint Petition for Declaratory Statement. The rule reads as follows:

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

(1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).

(2) The name, address, telephone number, and any facsimile number of

the petitioner.

(3) The name, address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative (if any).

(4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.

(5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

(6) The signature of the petitioner or of petitioner's attorney of qualified representative.

(7) The date.


Dr. Hubbard's petition did not seek the Board's opinion as to the applicability of a statutory provision, a rule, or order of the Board to the particular set of circumstances set forth in his petition. In fact, he did not cite to a single substantive statute, rule or order in his entire petition. He merely seeks the Board's opinion as whether he may legally interpret neuro-diagnostic data in his California office which were developed by certified neuro-diagnostic technicians in Florida from Florida patients.

Petitioner was notified prior to the Board's ruling that his petition was not compliant with Rule 28-105.002, Florida Administrative Codes, but he failed to provide the Board with an amended petition that cited to any relevant statutes, rules or orders of the Board. Therefore, the Board must decline to provide a response for failure to comply with the requirements of Section 120.565(1) and (2), Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

Based on the foregoing, the Board hereby **DENIES** Richard H. Hubbard, M.D.'s petition for declaratory statement

DONE AND ORDERED this 28th day of February, 2013.

BOARD OF MEDICINE


Allison M. Dudley, Executive Director
For Zachariah P. Zachariah, M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents 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 of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Richard H. Hubbard, M.D., 13252 Hawthorne Boulevard #100, Hawthorne, CA 90250; by email to: Edward A. Tellechea, Chief Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050, ed.tellechea@myfloridalegal.com; and Jennifer Tschetter, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, jennifer_tschetter@doh.state.fl.us; on this 28th day of February, 2013.


Deputy Agency Clerk

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Angel Sanders**
DATE **NOV 16 2012**

1 Richard H. Hubbard, M.D., J.D.
2 13252 Hawthorne Blvd., #100
3 Hawthorne, CA 90250
4 (310) 675-1555 (Telephone)
5 (310) 675-3355 (Facsimile)

6 **FLORIDA BOARD OF MEDICINE**

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9 In Re: Richard H. Hubbard, M.D.

) **CASE NO.**

10) **PETITION FOR DECLARATORY**
11) **STATEMENT [Administrative Procedure**
12) **Act; Code Sec. 120.565]**

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19 Richard H. Hubbard, M.D., J.D., hereby submits his Petition for Declaratory
20 Statement from the Florida Board of Medicine, as follows:

21 **I. INTRODUCTION**

22 For approximately the last three (3) years, Dr. Hubbard has provided
23 interpretations of neuro-diagnostic data in his California office which were developed
24 and generated by certified neuro-diagnostic technicians in states outside of California.
25 Dr. Hubbard has not been made aware of any statutes in any jurisdiction prohibiting the
26 generation or publishing of such reports in the manner and procedure in which they are
27 done.

28 Dr. Hubbard maintains sufficient professional liability insurance coverage

1 (\$1,000,000.00/\$3,000,000.00) and has never been disciplined by any medical
2 governing agency in his medical career.

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4 **II. INTERPRETATION IS PERMISSIBLE**

5 At no time has Dr. Hubbard participated in patient care in Florida or in any
6 other state where he was formally licensed, from California or from a presence in
7 another state. The names of the actual technicians performing the tests in the
8 other states are to be included in the reports. Payments for these interpretations
9 were made directly from those out of state health care providers to offices in
10 California, at the rate of between \$50 and \$75 per interpretation. At no time
11 were any insurance companies, government agencies, or patients billed from my
12 office for my interpretations. Payments were received by Dr. Hubbard directly
13 from the referring doctors.

14 Dr. Hubbard has practiced neurology over 30 years in the State of California.
15 He has extensive knowledge and experience in the performing of neuro-diagnostic
16 tests (EMG, NCV), and in the interpretation of the data generated by such tests.
17 His involvement in interpreting neuro-diagnostic test data from healthcare providers
18 in other states began after his office was contacted by various medical physicians
19 and practitioners who requested this specialized work to be done. These
20 interpretation reports were intended for the provider's use and not for any use in
21 direct patient care. At no time did Dr. Hubbard participate in patient care in any
22 other state except California, either from his California office or from a presence
23 outside the State of California.

24 **III. CONCLUSION**

25 The interpretation work performed by Dr, Hubbard is a specialized area of
26 practice which is important to the licensed physicians in Florida who seek Dr.
27 Hubbard's assistance. Dr. Hubbard's work is in compliance with Florida statutes as
28 he does not partake in any recognized practice of medicine that would violate

1 applicable Florida law. It is respectfully requested that pursuant to Title X, Chapter
2 Chapter 120 of the Florida Administrative Act, *Section* 120.565, the Florida Board
3 of Medicine issue a Declaratory Statement confirming the legitimacy of Dr.
4 Hubbard's interpretation work performed in California.

5 DATED: November __, 2012
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7 By: *Richard Hubbard, MD, JD*
8 Richard H. Hubbard, M.D., J.D.
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