

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF ACUPUNCTURE

IN RE: Petition for Declaratory Statement of
Matthew S. Enright, A.P.,

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

This matter came before the Board of Acupuncture (hereinafter the "Board") on September 17, 2010, in Orlando, Florida, for consideration of the referenced Petition for Declaratory Statement (attached hereto as exhibit A). The Notice of Petition for Declaratory Statement was published on September 3, 2010, in the Vol. 36, No. 35, in the Florida Administrative Weekly.

The petition filed by Matthew S. Enright, A.P., individually, makes the following inquiry: Is it permissible for a licensed acupuncture physician to diagnose and treat patients via online communication, such as high definition images sent online and real time online consultations?

FINDINGS OF FACTS

1. Petitioner, Matthew S. Enright, A.P., (hereafter "Petitioner") is an acupuncture physician licensed pursuant to Chapter 457, Florida Statutes.
2. The agency affected by this Petition is the Board of Acupuncture of the State of Florida. The statutory provisions upon which this Declaratory Statement is sought are contained in Section 457, Florida Statutes.
3. Diagnosis and treatment by acupuncture physicians includes detailed analysis of a patient's tongue in addition to other physical diagnostic exercises.
4. Adequate analysis cannot be accomplished by virtual examination.

CONCLUSIONS OF LAW

1. The Board of Acupuncture has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

3. For purposes of determining standing in this matter, Petitioner is licensed pursuant to Chapter 457, Florida Statutes, and is a substantially affected person due to the fact that his failure to comply with Chapter 457, Florida Statutes, may result in disciplinary action by the Board.


4. The Board's response to this Petition addresses solely the question propounded by the Petitioner and only addresses issues regarding the practice of acupuncture. The Board's conclusion is based solely on the Board's application of the factual circumstances outlined in the Petition to the pertinent statutory and rule provisions set forth above.

5. Recommending herbal therapies and homeopathic remedies via online consultations is not treatment recognized by a reasonably prudent acupuncturist as acceptable practice of acupuncture.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 27th day of December, 2010.

BOARD OF ACUPUNCTURE

 for

Anthony Jusevitch, Executive Director
For Katherine Teisinger, A.P., 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

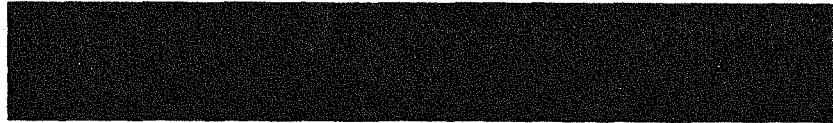
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Matthew S. Enright, A.P., Enright Acupuncture, 6848 NW 28th Way, Fort Lauderdale, Florida 33309; and by interoffice mail to Lee Ann Gustafson, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050; and General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 28th day of December, 2010.



Deputy Agency Clerk



ENRIGHT ACUPUNCTURE



June 8, 2010

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Angela Barton*
DATE 6/9/10

Board of Acupuncture
Re: Petition for Declaratory Statement Before the Board of Acupuncture
4052 Bald Cypress Way, BIN A02
Tallahassee, FL 32399 - 1703

To Whom It May Concern:

Please be advised that I, Matthew Enright am seeking a declaratory statement pursuant to section 120.565, Florida Statutes.

I am a licensed Acupuncture Physician in the state of Florida (AP 1711) and recently as numerous per patient requests have been approached about offering my services virtually to patients that are unable to physically travel to my office or family members of patients located in remote areas.

Upon further consideration, I have determined that I am able to effectively recommend herbal therapies and homeopathic remedies via online consultations. I am able to effectively make my differential diagnosis based on the following treatment protocols:

- Detailed analysis of the patients tongue will be performed by requiring each patient to submit high definition photographs / images prior to consultation.
- Complete and detailed consultations will be performed through such services / free websites as www.skype.com which will allow complete Physician / patient interaction via face to face internet based consultations.

Modern technology has made it possible to gather and present all pertinent information required to effectively treat patients virtually, economically and efficiently and I strongly believe this will be a viable treatment source that will ultimately improve the overall quality of life for patients that otherwise may not have access to my services.

Your time and consideration in granting this declaratory statement is greatly appreciated. Please don't hesitate to contact me should you have any further questions, comments or concerns regarding this information.

Yours in better health,

Matthew S. Enright, A.P.

6848 NW 28TH Way, Fort Lauderdale, FL 33309
Tel (954) 895-3276 Fax (518) 691-9393

OSTEO UNIT

TO: Cassandra G. Pasley, BSN, JD, Chief
Bureau of Health Care Practitioner Regulation

FROM: Anthony Jusevitch, Executive Director,
Florida Boards of Osteopathic Medicine, Massage Therapy,
Acupuncture, Speech Language Pathology & Audiology and
Council on Licensed Midwifery

DATE: Monday, December 27, 2010

RE: Delegation of Authority

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During my absence December 27 through January 4, 2010, Taimour Chaudhry, Regulatory Supervisor, is delegated authority for the board office.

Thank you,

Anthony Jusevitch