

**STATE OF FLORIDA
BOARD OF PSYCHOLOGY**

**IN RE: THE PETITION FOR DECLARATORY STATEMENT OF
DAVID HORENSTEIN, Ph.D.**

FINAL ORDER

THIS MATTER came before the Board of Psychology ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held on April 22, 2005, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement filed February 15, 2005, by David Horenstein, Ph.D., ("Petitioner"). Notice of the Petition was published on March 4, 2005, in the Florida Administrative Weekly, Volume 31, No. 9. No comments by interested persons were received. Petitioner was neither present at the meeting nor represented by counsel. The Board was represented by Mary Ellen Clark, Assistant Attorney General. Having considered the petition, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is a psychologist licensed since 1975 in the State of New York.
2. While in New York, Petitioner has been on the professional panel of the US Social Security Administration, Office of Hearings and Appeals, for over 25 years. In this role, he was traditionally asked to review files of patients who were appealing their benefits denials by the Social Security Administration and testify as an expert at related hearings.
3. Petitioner has now semi-retired and moved to Florida.

4. Petitioner asks whether the work he has been performing for the US Social Security Administration, Office of Hearings and Appeals, constitutes the practice of psychology under Chapter 490, Florida Statutes, such that he would need to be licensed in Florida were he to continue this work from his Florida residence.

CONCLUSIONS OF LAW

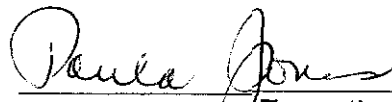
1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes.

2. The Board answers the question in the affirmative. The work he has been performing for the US Social Security Administration, Office of Hearings and Appeals, does constitute the practice of psychology under Chapter 490, Florida Statutes, and he would need to be licensed in Florida if he were to continue this work from his Florida residence.

3. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, Florida Statutes, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, by filing a notice of appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal, accompanied by the appropriate filing fee, and with the department's clerk of agency proceedings, within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 5th day of May, 2005.

BOARD OF PSYCHOLOGY



Kaye Howerton, Executive Director
for Richard Hoffman, Ph.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to David Horenstein, Ph.D., 344 Carinosa Court, Naples, FL 34110; and by interoffice mail to Mary Ellen Clark, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 5 day of May, 2005.



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Deputy Agency Clerk

MOA/HEALTH SERVICES
CLERK *[Signature]*
DATE 05 FEB 14 PM 2:48
2-15-05

Petition for Declaratory Statement before the Florida Department of Health, Board of Psychology

The current petition is being submitted by David Horenstein, Ph.D., 344 Carinosa Court, Naples, Florida 34110. My telephone number is (239) 566-3119. I am acting in my own behalf in the submission of this petition.

I am requesting a ruling regarding my particular circumstance which will be described in detail below. Specifically, I am requesting a ruling with regard to Section 490.014, Exemptions. Specifically, I am attempting to determine my status with regard to Section 490.012, 1a.

At this point, I will attempt to describe my current situation and the reason for the submission of this petition. I am currently a licensed psychologist in the State of New York, and have been since 1975. I have never received any censures, nor have any actions been brought before me by the professional board in the State of New York. I have semi-retired and moved to Florida where I now maintain a full-time residence. I have no immediate desire and/or plan to pursue the process of obtaining licensure in the State of Florida, as I do not wish to hold myself out to the public as a psychologist, and engage in the traditional practice of psychology. However, I have been on the professional panel of the United States Government Social Security Administration, Office of Hearings and Appeals, for over 25 years. In my role with the government, I am traditionally asked to review files of patients who are appealing their denials by the Social Security Administration, and asked to provide some input regarding my review of this chart. At times, I am asked to testify at Social Security hearings as an expert witness/resource to the judges of the Social Security Administration who are asked to oversee patient appeals and arrive at an ultimate determination when patients apply for Social Security Disability. I have engaged in this practice for many years, and have appeared in hearings in New York, and have testified by telephone in Pennsylvania and West Virginia as well. I have a rather extensive, long-term relationship with the Social Security Administration that I would like to maintain in the State of Florida.

I have no intention or desire to set up an independent office, and offer services to the general public. I simply wish to continue to function on the Social Security Administration expert panel here in the State of Florida as I had in New York and other states.

I am seeking some ruling regarding whether my status might allow me an exemption under Section 490.012 as I am not holding myself out to the public as a psychologist, nor am I attempting to obtain income from or provide services to the public at large. I simply wish to continue to function as a medical expert and support to this federal agency as I have for so many years. I will continue to perform the duties for which I have been retained by the Social Security Administration within the confines of this agency, and consequently I am not certain that pursuing licensure would be necessary. I am requesting the clarification of this point.

Most certainly, the argument can be made that simply pursuing licensure would enable me to continue to function as I have in the past. However, I do not wish to engage in the vast multitude of activities of a traditional psychologist and I do not believe that the pursuit of licensure would be necessary for the professional role I wish to maintain in my new state of residence. Once again, I wish to reiterate the fact that I will not hold myself out to the public, will not establish a professional office or telephone listing which may result in patient referrals, and will only continue to provide supportive services to the federal government as I have for so many years. I wish to emphasize yet again that my professional functioning in this role is limited to clarifying medical records for federal judges, and educating them as to the potential limitations of any psychiatric conditions or symptoms present in a disability applicant. I do not treat the patients themselves and provide information to the Social Security Administration which provides a basis for a Social Security Disability application. My involvement with patients is through their existing medical records, and my role is limited to helping judges understand the mental health symptoms, dynamics and limitations which appear in such records.

If, upon review of this petition, it appears that more information for further clarification is necessary, please feel free to contact me. I would most certainly be willing to attend a board meeting if necessary in an attempt to ensure that the board fully understands my petition and my role.

I appreciate your assistance in the resolution of this question.

Sincerely,



David Horenstein, Ph.D.

2/10/05

Date