

AFFIDAVIT

1. With regard to venue, the Florida Board of Bar Examiners (FBBE), sued under the Americans with Disabilities Act (ADA) and E. Hunter, Executive Director of the FBBE, routinely conduct meetings for investigation and general business of the FBBE in the Southern District of Florida. They did send into the district the complained of application and follow up letters and did improperly, in a discriminatory and illegal manner under the ADA, inquire of the Jewish Family Services, Plantation, FL (in the Southern District) for all psychotherapy session records concerning Dr. Hason and inquired in an overbroad manner, considering the ADA, of Dr. Robert Perovich, located in Coral Springs, FL (in the Southern District) for psychiatric records concerning Dr. Michael Hason. Dr. Perovich was Dr. Hason's psychiatrist in FL during the relevant time of 1997-2004, during which time the events complained of occurred. In addition, Dr. Hason's witnesses, including Dr. Perovich, Dr. Marcia Schultz, his psychologist for three years, Drs David Ross and Howard Ruskin, Neurologists who mentored Dr. Hason each for about two years, 2000-2001 and 2002-2003, respectively, all reside and work in the Southern District. It would be near impossible to have them disrupt their practices and bring them to the Northern District for a trial and would add at least \$10, 000 in expenses for Dr. Hason to cover their added lost time.

2. The investigative hearing was held in the Southern District and many improper acts with respect to the ADA occurred during the hearing. The initial question concerned Dr. Hason's not working for the prior seven years clearly relates to his history of disability and the discrimination that he suffered after he was rehabilitated by 1997 at the

hands of the Medical Board of California and, more importantly, the Florida Board of Medicine. The second question was “Why did you sue the Florida Board of Medicine (FBOM)?” This had a retaliatory tone and, indeed, the FBBE was in a tough spot, because if they licensed Dr. Hason it would tend to show that the FBOM acted improperly in denying Dr. Hason licensure based on an uncontrolled psychiatric disability, Narcissistic Personality Disorder-a trumped up diagnosis anyway. The FBBE main investigator then proceeded to ask numerous questions about disability, despite the fact that the record before the FBBE was crystal clear with regards to Dr. Hason’s wellness and safeness to practice both medicine and law, based on more than six recent psychiatric and psychological reports. Even when these were reviewed, the investigator refused to stop and tried to lead Dr. Hason into admitting that his diagnosis was uncertain, might be bipolar disorder, and that he was not being treated properly for his true diagnosis.

3. The main investigator also insinuated that Dr. Hason might not be able to comport himself in front of a judge in a professional manner, despite the fact that Dr. Hason had done so about five hundred times. He also insinuated that Dr. Hason would be unable to handle his clients’ money, despite the fact that there had never been a complaint by a client against Dr. Hason during more than four years of practice in the 1980s. The investigators, in making those insinuations, also had to ignore the fact that Dr. Hason had already won a judgment at trial for more than \$!6,000, obtained a reversal in a manslaughter case, and more recently established the validity of the ADA in the 9th Circuit, overturned a Florida Board of Medicine rule that had been on the books for ten years, and obtained a reversal of the decision of the N.Y. Office of Professional

Responsibility, after briefing and an appearance before the Appellate Division in Albany, N.Y. The FBBE and particularly the investigators also ignored the numerous references in their file attesting to Dr. Hason's good character, knowledge and skills.

4. The main investigator at the hearing also pointedly questioned Dr. Hason about all his civil rights cases, despite the fact that this was not a proper subject of inquiry, absent a reasonable belief by the FBBE and/or the investigator that Dr. Hason could not comport himself in a professional manner before a court. With respect to many of the details asked about, Dr. Hason had no obligation to participate or do anything in his own cases at any time that he felt it substantially inconvenient for him to do so. Despite this objection, it needs to be said that overall, Dr. Hason's quality of legal work in these private cases was quite good. The work went into thousands of pages of writing for which Dr. Hason was not compensated and a few errors here and there meant little given that they were private cases. Dr. Hason was never accused of negligence by a client during hundreds of representations.

5. The main FBBE investigator also insinuated that Dr. Hason might be unable to handle other people's money, that of his clients. The background of this insinuation was that Dr. Hason has been a consumer advocate in a small way and contested several small claims for payment made against him, when the equities were in his favor or he had significant defenses. The FBBE was focused on these debts and so Dr. Hason repeatedly asked the FBBE if they wanted Dr. Hason to pay them, as they all amounted to less than about \$4000.00 total. The FBBE repeatedly refused to comment, but only moved towards a charge. Similarly, Dr. Hason asked the FBBE investigators if they preferred that he simply pay all the debts despite his good faith defenses. The investigators refused to

comment and apparently only wanted to preserve the situation so that they could charge it in a specifications. The hearing was not a search for truth or meant to be fair, but a rather a tool for excluding Dr. Hason and/or delaying the processing of his application and licensure. In fact, the FBBE next hired an outside investigator to waste time reviewing all of Dr. Hason's private cases in order to muck up some trumped up charges of "negligence" in his private cases. This further delayed the application, so that the three year point passed and the FBBE demanded a new application and filing fee. Dr. Hason was then misled in that he was told that if he answered the Specifications, he could be considered for licensure with conditions. In fact, Dr. Hason had been asking throughout the application for this and wanted to know what the FBBE wanted him to do to make himself acceptable to them and there was never a response, but just a request for more documents, over and over. Dr. Hason also repeatedly pointed out that the Board was proceeding in violation of the ADA. For example, their request for all session records from Jewish Family Services, Plantation, FL, wasted a lot of time, until Dr. Hason realized they would not accept a report or summary. Similarly, the FBBE insisted in seeing hospital records that were about nine years old and we wasted time as those records became more than ten years old and the FBBE accepted that they were remote and did not have to be presented. Ms. Hunter aksi promulgated the FBBE application requesting all records of any psychiatric or psychological treatment and personally decided, after Dr. Hason's objection, that the period would be for the prior ten years, also a clear violation of the ADA's requirement that an applicant for a license be evaluated based on best current objective medical evidence. Any official would have realized that this was a violation of federal law and thus Ms. Hunter must lose her qualified immunity.

for claim(s) based on these behaviors and her behavior is also attributable to the FBBE and the claims it..

6. Dr. Hason has all his records of the proceedings up to 2004 at Plantation, FL and lived in Plantation during 1997-2004, until he was forced out by lack of licensure by the FBBE and the FBOM.

7. Dr. Hason did not serve the scheduling Order on the Defendants, because he thought that they had to be served process first and that they had to appear first. He did not become aware of their appearance until Jan. 10, 2006. This Court shortly thereafter ordered that the trial was continued a new scheduling order would be created and directed Dr. Hason to serve a copy of this recent Order on the Defendants attorneys. Dr. Hason will do so at the time, tomorrow, when he serves them with his response to their Motion to Dismiss.

8. Dr. Hason has made it abundantly clear in each cause of action, who the particular Defendant(s) are and clearly separated his claims. All ADA and retaliation claims can only be viable against an entity, the FBBE. The 1983 claim can only be made against an individual, Ms. Hunter, in her individual capacity. The claims for injunctive relief can only be made against Ms. Hunter in her official capacity, as permitted by *Ex Parte Young*.

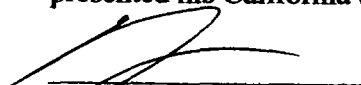
9. De facto, Dr. Hason has been forced to abandon his application before the FBBE due to discrimination. This will become a fait accompli when his passing score on the Bar exam is deleted in March. Dr. Hason does plan to apply to the FL Bar at some time in the near future, but only after being licensed first in California and practicing safely and effectively there first, so as to allay FBBE concerns.

10. This case was brought at a certain time to avoid statute of limitations problem and

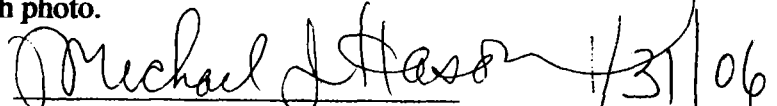
it would be a hardship if this Court should dismiss the case on venue basis, rather than transfer it.

WHEREFORE, this Court should deny the Defendant's Motion to Dismiss in its entirety or transfer this case to the Northern District and grant and further or different relief just in the premises.

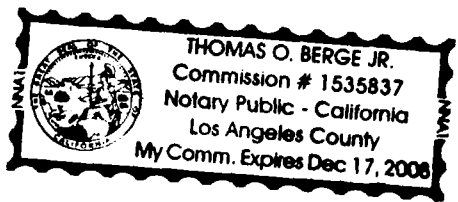
Sworn to and subscribed before me under penalties of perjury on Jan. 31, 2006 at Alhambra, County of Los Angeles, State of California, by Michael J. Hason, who presented his California driver's license with photo.



NOTARY



MICHAEL J. HASON, M.D., J.D.



MEMORANDUM OF LAW

1. The 11th Amendment has been abrogated properly and is not a bar to enforcement of the Americans with Disabilities Act. Tennessee v. Lane, No. 02-1667 (U.S. May 17, 2004); Association for Disabled Americans, Inc., et al v. Florida International Univ., No. 02-10360 (11th Cir. April 16, 2005. The proper Court for a hearing of an ADA claim is thus a federal District Court. It would also be irregular to assume that the Florida Supreme Court could easily be objective on the question of whether to award damages under the ADA against itself or its administrative arm, the Florida Board of Bar Examiners (FBBE hereafter). Dale v. Moore, 121 F.3d 624 (11th Cir. 1997) is not contrary since there the Bar applicant had received a final decision from the FBBE and then from the Florida Supreme Court, so that the *Rooker-Feldman* doctrine controlled requiring abstention. In the within case no such final decisions were reached and the doctrine is inapplicable. In Defendants' cited case, McReady v. Michigan State Bar Standing Committee on Character and Fitness, 926 F.Supp. 618 (W.D. Mich. 1995), aff'd, 100F.3d 957 (6th Cir. 1996), the Court did not apply *Rooker-Feldman* to the ADA claim, but rather heard it and dismissed it on the facts presented.

2. The Americans with Disabilities Act covers all State instrumentalities including the judicial branch and specifically itself and/or in the Dept. of Justice's regulations covers all state licensing activities.

3. With regards to venue, Dr. Hason, in his affidavit, has indicated the extensive number of discriminatory acts by the Florida Board of Bar Examiners and its members and agents which occurred or related to locations in the Southern District, especially what occurred at the investigative hearing. It would be foolish to assume that what was done

there was insufficient connection with the venue, because the final notice of a decision to file specifications later came from Tallahassee. It would be foolish to assume that the investigative hearing Board members did not reach a tentative decision in Ft. Lauderdale and regardless there questions and comportment at the investigative hearing was enough to establish proper venue in the Southern District. We have also indicated that this venue would be appropriate for the convenience of Dr. Hason's witnesses and who have sent documents to the Board previously and that a Northern District trial would be impossible in terms of disrupting the professional practices of these witnesses and the added witness fees and expenses for Dr. Hason amounting easily to more than \$10,000.00 extra.

4. The Defendants have cited venue cases, p.6 of their motion, *Kirkpatrick, Blasi*, and *Diaz* were decided under a prior version of the venue statute, which looked to the site "where the cause of action arose." The current 28 U.S.C 1391 a and b, both indicate that only a substantial number of events must have occurred in a district in order for the Plaintiff to site venue there. The standard for deciding if substantial events have occurred in a district is more than a tangential connection to the district. *Siegel v. Homestore, Inc.*, 255 F. Supp.2d 451 (E.D.Pa) Courts have held that, generally, if the contacts with the district are not insubstantial, the Plaintiff's choice of venue should not be disturbed.

5. With respect to *Younger* abstention, de facto, Dr. Hason's application to the FBBE is abandoned per his affidavit. Furthermore, the specifications do not quite rise to the level of quasi-criminal. The charges per Dr. Hason's affidavit are nearly of the quality of "trumped up" and no hearing will occur on them. There have been no truly judicial proceedings so far, only an investigative hearing which is "informal."

Regardless, Dr. Hason may proceed with his suit for damages, as *Younger* concerns relief

in the nature of injunctive interference. Also, *Younger* is based in comity, while the ADA must override this important consideration, as it is based in a long history of state discrimination against the disabled, including in the professional licensing area. Comity would be moved aside for this latter consideration alone. It is also well established that *Younger* is an exception to the rule that federal courts have a virtually unflagging duty to adjudicate claims within their jurisdiction (Wexler v. Lapore, cite unavailable); and there also can be parallel actions in state and federal courts when the state claims and issues are properly separated from the federal or when state officials have acted in bad faith as alleged here by Dr. Hason, in the within case. There is no issue of res judicata here to be considered, as in some of the Defendants' other cited cases. Defendants cases such as *Lawrence* are inapposite, as Dr. Hason also has no application for a license before the FBBE at this time due both to abandonment after experiencing discrimination and/or the fact that under the FBBE's rules he would have to file a new application after three years and has declined to do so

6. With respect to the accusations against Ms. Hunter, her administration of the initial application question requirements, especially requesting all psychiatric and psychological records, then, after Dr. Hason's objection, ten years worth, does not rise to the level of a judicial act necessitating absolute rather than qualified immunity. Absolute immunity only covers what is essential to protect the integrity of the judicial process itself. Cf. McMillan v. Svetanoff, 793 F.2d 149, (7th Cir. 1986), cert. den. 107 S.Ct. 574, 479 U.S.985, 93 L.Ed.2d 577, appeal after remand 878 F.2d 186. Ms Hunter's acts were administrative in nature and did not involve the exercise of discretion rising to the level of a judicial decision. Her act was not a denial of licensure or even a decision to initiate

specifications/charges which if sustained would bar licensure.

7. In his affidavit, Dr. Hason has provided sufficient circumstantial evidence of retaliatory animus, to support his claims or retaliation for suing the Florida Board of Medicine (FBOM) under the ADA. The record before the FBBE will show that the decision of the FBOM was severely intertwined with a licensure denial by the Medical Board of California in 1998 and an ADA suit against it by Dr. Hason. The details of the contents of this record before the Board must be elaborated after further discovery.


However, we know that the investigators relied on the trumped up diagnosis arising out of the California proceedings and that indirectly they attempted to support the truth of that diagnosis by leading questions trying to establish the diagnosis of bipolar disorder. In all causes of action the claims relate to licensing which are protected liberty interests under the 5th and 14th Amendments and which the ADA also relies upon for its validity in abrogating the 11th Amendment.

8. Plaintiff believes that the FBBE should be enjoined from requesting all or ten years of psychiatric/psychological records and that this issue should not escape judicial scrutiny and is likely to, as disabled individuals in the future would be likely to abandon their applications in the face of such a request by the FBBE. The claims are ripe as the demand for the records and the provision of most of the records, but not all has taken place. Dr. Hason would be deterred from applying to the FBBE again, if he knew that he would face such an uncorrected application or even a ten year period in which he would have to present such records to the FBBE.

IN CONCLUSION

For the most part Defendants case are inapposite and do not stand for the principles claimed. The ADA for damages may be litigated in this Court. The claim against Ms. Hunter should be defended on a basis of qualified and not absolute immunity and injunctive relief should be allowed as directed against the application clauses requiring excessive submission of psychiatric/psychological records to support an application before the FBBE for licensing as a FL attorney.

Dated: Jan. 31, 2006



MICHAEL J. HASON, M.D., J.D.

CERTIFICATE OF SERVICE

I, Michael J. Hason, certify that I served Defendants' attorney at her address below with a copy of Response to Motion to Dismiss ,

by placing a copy into a preaddressed, prepostage paid envelope sealing and on

Jan. 31, 2006 placing said envelope in a box maintained under the sole control of the

U.S. Postal Dept. for the collection of mail and faxed a copy to Ms. James

Addressee:

James J. Dean, Esq.

Sean M. Shaw, Esq.

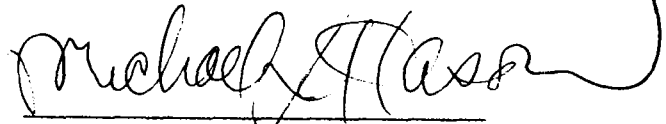
Messer, Caparello & Self, P.A.

215 S. Monroe St., Suite 701

P.O. Box 1876

Tallahassee, FL 323021876

Dated: Jan. 31, 2006

A handwritten signature in black ink that reads "Michael J. Hason". The signature is written in a cursive style with a large, sweeping flourish at the end.

MICHAEL J. HASON, M.D.