

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION**

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| FILED | |
| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 10/7/2013 |
| File # | 2013-05915 |

**In Re: Petition for Declaratory
Statement,**

**Dependable Diabetic and Medical Supply, LLC,
Petitioner.**

DS 2013-063

DECLARATORY STATEMENT

The Department of Business & Professional Regulation, Drugs, Devices, and Cosmetics Program, issues this Declaratory Statement in accordance with Section 120.565, Florida Statutes (2013).

PRELIMINARY STATEMENT

On or about July 8, 2013, the Division received a petition for declaratory statement (Exhibit A) filed by Dependable Diabetic and Medical Supply, LLC (hereafter "Dependable Diabetic"). The Petitioner is seeking a declaratory statement regarding the applicability of Section 499.01, Florida Statutes, to the Petitioner's facts. The Department published the notice of the petition for declaratory statement in the August 2, 2013, issue of the Florida Administrative Register.

FINDINGS OF FACT

The following findings of fact are based on the information submitted by Dependable Diabetic. The Department takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. The Petitioner requests a declaratory statement as to the following:
 - a. Whether the activities of Dependable Diabetic require licensure pursuant to Section 499.01, Florida Statutes.

2. Based on representations made by Dependable Diabetic and Dependable Diabetic's marketing material available for review by the general public, Dependable Diabetic ships durable medical equipment to patients, via common carriers, throughout the United States.

3. The activities of Dependable Diabetic do not require licensure pursuant to Section 499.01, Florida Statutes.

CONCLUSIONS OF LAW

1. The Department is the state agency charged with regulation of drugs, devices, and cosmetics, pursuant to Chapter 499, Florida Statutes.

2. The Department has jurisdiction to enter this order pursuant to Section 120.565, Florida Statutes, and Rule 28-105.001, Florida Administrative Code.

3. Section 120.565, Florida Statutes, provides:

120.565 Declaratory statement by agencies.—

(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 that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

4. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. Dependable Diabetic has standing to petition for a declaratory statement.

6. Section 499.01, Florida Statutes, (2013) provides:

499.01 Permits. — Prior to operating, a permit is required for each person and establishment.

7. Section 120.60(2). Florida Statutes, (2013) provides:

120.60 Licensing. – (2) If an applicant seeks a license for an activity that is exempt from licensure, the agency shall notify the applicant and return any tendered application fee within 30 days after receipt of the original application.


8. Based upon Dependable Diabetic's representations to the Department concerning Dependable Diabetic's business model, if Dependable Diabetic applied for a permit pursuant to Chapter 499, Florida Statutes, the Department would advise Dependable Diabetic that they do not require a permit, pursuant to Section 120.60(2), Florida Statutes.

Based on the foregoing, the activities of Dependable Diabetic and Medical Supply LLC, do not require licensure pursuant to Section 499.01, Florida Statutes, (2013).

Done and ordered this 4th day of October, 2013, at Tallahassee,
Leon County, Florida.

KEN LAWSON, SECRETARY
Department of Business & Professional Regulation

BY:


Reginald D. Dixon, Division Director
Division of Drugs, Devices and Cosmetics
1940 North Monroe Street, Suite 26A
Tallahassee, FL 32399-1047
Telephone: (850) 717-1800
Facsimile: (850) 414-8240

NOTICE OF RIGHTS TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENT OF RULE 9.110(C), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY THE APPROPRIATE FILING FEE AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217, WITHIN THIRTY DAYS OF RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jonathan Johnson, 240 Blue Juniper Boulevard, Unit B, Venice, Florida 34292-1753, this 7th day of October, 2013.

for: Brenda M. Nicks
Agency Clerk

Copies furnished to:

Reginald D. Dixon
DDC Division Director

Bart O. Moore
DDC Attorney



FILED
 Department of Business and Professional Regulation
 Deputy Agency Clerk
 CLERK Brandon Nichols
 Date 7/8/2013
 File #

Dependable Diabetic and Medical Supply LLC

Petition for Declaratory Statement before the Florida Department of Business and Professional Regulation.

Petitioner: Jonathan Johnson
 240 Blue Juniper Blvd Unit B
 Venice, FL 34292-1753
BTimochenko@usdnj.com

DS 2013-063

Statute, Agency Rule, Agency Order and/or Code Section(s) on which the Declaratory Statement is sought

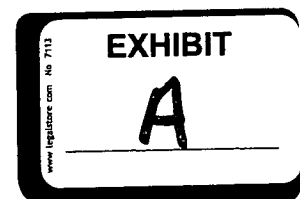
Per Florida Statute 400.01, we do not require licensure. Please see table, below, from your webpage:
<http://www.myfloridalicense.com/dbpr/ddc/ProgramFAQ1.html>

| Activity Description | Location | Permit (Generally) Required under Chapter 499? |
|--|--------------------|--|
| Manufacturing a Drug, Device or Cosmetic | In Florida | Yes |
| Repackaging a Drug, Device or Cosmetic | In Florida | Yes |
| Distributing a Prescription Drug | In or Into Florida | Yes |
| Distributing an Over-the-Counter Drug | In or Into Florida | No |
| Distributing a Device | In or Into Florida | No |
| Distributing a Cosmetic | In or Into Florida | No |

The Petitioner requests a signed letter from the Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics stating that our company, Dependable Diabetic Supply, is not required to obtain a Florida Business License.

Respectfully submitted the 30th day of May, 2013

Dependable Diabetic and Medical Supply LLC
 240 Blue Juniper Boulevard Unit B; Venice, FL 34292
 Tel: 877-520-2002 Fax: 941-485-3355





Dependable Diabetic and Medical Supply LLC

Jonathan Johnson
Owner of Dependable Diabetic Supply, LLC
Petitioner

Dependable Diabetic and Medical Supply LLC
240 Blue Juniper Boulevard Unit B; Venice, FL 34292
Tel: 877-520-2002 Fax: 941-485-3355