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Department of Commerce and  
Economic Development

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Summary suspension of  
dentist license

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In your March 4, 1993, memorandum you asked for our advice on a question posed by the Alaska State Board of Dental Examiners (board). The board asked what constitutes a clear and immediate danger justifying summary suspension of a dentist license. We orally advised the board on this matter at its May 6-7, 1993, meeting. This memorandum summarizes our advice.

#### DISCUSSION

The board's question arose in connection with two letters from the Attorney General's Office in Anchorage concerning the proposed summary suspension of two dentist licenses. Copies of these letters were attached to your March 4 memorandum. Apparently, the board wished to summarily suspend the two licenses and the Anchorage AGO declined to support that action. The board then requested advice from our office on what constitutes a "clear and immediate danger" that would justify summary suspension.<sup>1</sup>

In the process of answering the board's question we also advised the board of its role in a summary suspension

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<sup>1</sup> The statutory authority for summary suspension is set out in AS 08.01.075(c):

A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety.

We note that this statute has not yet been tested in the Alaska Supreme Court, therefore, we do not know for certain if it satisfies our state constitutional due process requirements.

action. We explained that in order to afford due process to the licensee it is important for the board to scrupulously maintain its neutrality and role as an adjudicator. The board may not assume the role of investigator or prosecutor, because this undermines its neutrality and adjudicatory function.

Shah v. State Bd. of Medicine, 589 A.2d 783, 789-90 (Pa. 1991)<sup>2</sup> is instructive of the proper role for the board. The board may not initiate a summary suspension action. Instead, the board will adjudicate a request for summary suspension brought to it by the attorney general's office (the division's attorney) and the division's investigative staff. In its response the board may determine whether there is probable cause for summary suspension, and still maintain its neutrality and adjudicatory role.

The proper procedure is for the division's attorney, in conjunction with the division, to make the initial determination on whether summary suspension is appropriate. The attorney does this after evaluating information gathered by the investigator from witnesses: for example, from other doctors, patients or police. If the attorney determines that this information supports an action for summary suspension, the attorney prepares the petition for summary suspension.

Then the petition is presented to the board to determine whether there is probable cause<sup>3</sup> to believe that the

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<sup>2</sup> In Shah at 792, the court explains:

Administrative tribunals must be unbiased and avoid even the appearance of bias to be in accordance with principles of due process.

Likewise, Shah at 794 provides:

Due process requires that the prosecutory and investigatory aspects of the matter be adequately separated from the adjudicatory function. [Cites omitted.] Commingling of the adjudicatory and prosecutory functions violates due process in that it may tempt a person who must remain impartial to tilt the balance in favor of one side.

<sup>3</sup> Probable cause is defined as:

Reasonable cause; having more evidence for than

dentist presents an immediate danger to the public health and safety. "Immediate danger" means that the dentist is presenting an immediate and clear danger of causing further irreparable harm to his or her patients as a result of the dentist's incompetence or improper conduct.<sup>4</sup> Thus, summary suspension should only be used when the board determines it is probable that unless the board suspends the dentist's license immediate patient harm will occur. If the board finds probable cause, the board may order summary suspension.

#### CONCLUSION

In conclusion, the attorney general's office and investigative staff evaluate a potential summary suspension case. These staff persons make an initial determination on immediate danger. The assistant attorney general and the investigator then present the case to the board, requesting that the board determine whether or not there is probable cause to believe that there is an immediate danger as defined above. If there is, summary suspension becomes effective. Following the board's determination of this issue the board has no further involvement with the case until the case comes to the board for adjudication on the merits.

We trust that this memorandum answers your question.

SJF:jp

cc: Members, State Dental Board

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(..continued)

against. A reasonable ground for belief in the existence of facts warranting the proceedings complained of.

Black's Law Dictionary 1081 (rev. 5th ed. 1979).

<sup>4</sup> See also Kibler v. State, 718 P.2d 531, 537 (Colo. 1986).