



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

CONNECTICUT STATE ETHICS COMMISSION
97 ELM STREET (REAR)
HARTFORD, CONN. 06106

85-13

Declaratory Ruling

In re: Michael J. Zazzaro, D.M.D.

Dental Commission Member Serving as Consultant
to Commissioner of Health Services

The Ethics Commission has been asked whether a member of the State Dental Commission may also be employed as consultant to the Commissioner of Health Services.

Members of the Dental Commission are appointed by the Governor; five of them, of which the member in question is one, must be practitioners in dentistry. Subsection 20-103a(a), General Statutes. They are not compensated for their services, but are reimbursed for expenses incurred in the performance of their duties. Subsection 20-103a(b), id. Their several duties in relation to dentists and dental hygienists licensed to practice in Connecticut include (1) hearing and deciding matters concerning suspension or revocation of licensure, (2) adjudicating complaints filed against practitioners, and (3) imposing sanctions when appropriate. Id. If the Dental Commission finds that a practitioner has violated one of a number of statutory standards, it may, among other things, suspend or revoke the practitioner's license. Sections 20-114, 19a-17, General Statutes. No dentist or dental hygienist may practice in Connecticut without a license. Sections 20-106, 20-111, id.

Considering the manner of their appointment and the State power they may exercise, members of the Dental Commission are public officials for purposes of the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes). Subsection 1-79(j), id.

The Dental Commission member in question has been employed by the Commissioner of Health Services to furnish a variety of personal services. Pursuant to his contract these include providing advice to the Commissioner and to the health system agencies concerning dental health and dental services in Connecticut; representing the Commissioner at meetings and

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conferences as required; assisting in the investigation of complaints of professionals who might be in violation of the General Statutes or regulations concerning dental practice of dentistry; inspecting dental office laboratories to insure compliance with the General regulations administered by the Dental Commission; assisting in the documentation and substantiation of charges which the Department of Health Services has brought against health professionals licensed by the Department; as a consultant, the member is paid an hourly fee, plus reimbursement for travel expenses.

The license which permits a professional to practice his profession is a valuable property right. There can be no doubt that a respondent is constitutionally entitled to due process, including an opportunity to be heard by a fair and impartial body, in a proceeding which could result in suspension or revocation of the license. Altholz v. Connecticut Dental Commission, 4 Conn. App. 307 (1985). A Commission has investigated a possible violation by a dentist who might well have prejudged the facts in a case where a consultant whose contract is renewed from time to time could have a financial interest in supporting the conclusions of the investigation. Subsection 1-84(c), General Statutes. Therefore, the member should not sit in judgment on the case, and Department regulations forbid him to. Subsections 19-2a-11(c), Regulations of Connecticut State Agencies, and Disqualification of a member who has investigated and avoids non-compliance with provisions of the Uniform Administrative Procedure Act, Chapter 54, General Statutes, such as the limitation on ex parte communication (section 4-181, General Statutes) and the requirement that findings of fact be based exclusively on the evidence and matters officially noticed (subsection 4-177(g), General Statutes). With regard to the latter, it would seem virtually impossible for the member to ignore facts and opinions acquired during the investigation, yet the respondent would have no opportunity to explain or rebut them if they were not entered on the record.

It appears that by becoming a paid consultant whose duties include inspecting dental facilities and investigating dental professionals concerning matters which might result in disciplinary proceedings before the Commission, the member has accepted employment which impairs his independence of judgment in violation of subsection 1-84(b), General Statutes. His judgment is so clearly impaired that he is forbidden not only by the standards of due process but by Department regulations

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to serve as a member in cases he has investigated. (There is also a question as to whether the Dental Commission can be considered fair and unbiased when it hears a case investigated by one of its members, who may also testify in the case, even though the member does not participate in adjudicating the matter.)

It should be noted that the process by which a member of the Dental Commission is retained as a consultant must be an open and public one, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. Subsection 1-84(i), General Statutes.

In summary, the duties of a member of the Dental Commission who is hired as a consultant should not include investigating matters which may later be acted on by the Commission in disciplinary proceedings. Furthermore, the procedures under which the consulting contract is reached must satisfy the requirements of subsection 1-84(i), General Statutes.

By order of the Commission,



Dated 8/12/85

