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ADVISORY #2020-19

Subject: Guidance to Licensees subject to COVID-19 related summary suspensions

The following guidance is provided to licensees who are the subject of a summary suspension of their license and related disciplinary charges in connection with violations of Executive Orders relating to the COVID-19 pandemic:

- Hearings

A licensee who has had its license suspended pursuant to subdivision 3 of section 401 of the State Administrative Procedure Act is entitled, under that act, to a prompt hearing and will be informed of that right expressly in the Order of Summary Suspension and provided contact information for purposes of exercising that right.

In our recent experience, most summary suspension cases are resolved without a prompt hearing, and scheduling hearings in cases in which licensees do not even plead “not guilty” to the charges would be inconsistent with existing practice and a waste of resources. Accordingly, a prompt hearing will be scheduled only for licensees who have entered a Not Guilty plea and made a request for a “prompt hearing” in writing to Counsel’s Office. Email requests for a prompt hearing will qualify as a request in writing.

The parties – the licensee and SLA Counsel’s Office -- shall consult and select at least two dates within ten business days of the date of the written request when both parties and their witnesses will be available. Counsel’s Office will then convey those dates to the Hearing Bureau. The Hearing Bureau will confirm the availability of a Hearing Officer for one of those dates.

The submission of a Conditional No Contest offer (a CNC plea), of a request for reconsideration of an Order of Summary suspension, or of a request for reconsideration of a Full Board counteroffer to a prior CNC plea, will result in the postponement of any hearing that had been scheduled in the case. Once a CNC plea or request for reconsideration has been sent to Counsel’s Office, the matter shall be heard at the next regularly scheduled meeting of the Full Board, if not earlier, as long as such CNC or reconsideration request is received by the Counsel’s Office prosecutor handling the case by 5 p.m. on the Thursday before the following Wednesday’s meeting. CNC pleas *are not to be sent directly to the Secretary to the Authority*.

No hearing will be scheduled in a case in which a licensee has a CNC plea or reconsideration request pending until after both (a) a decision is made on the plea or request, and (b) the plea in the case is changed to not guilty and another written request for a prompt hearing is delivered to Counsel’s Office.

- Reconsideration of Summary Suspension

Requests for reconsideration of a summary suspension will be considered in the same manner as the reconsideration of any Full Board determination in a disciplinary matter. The request should be submitted

to Counsel's Office, which will forward the request to a Member of the Authority for review. That Member will either deny the request or forward it to the Full Board for a determination.

- Return of license certificate

If the resolution of the disciplinary proceeding provides for a civil penalty rather than cancellation or revocation of the license, the summary suspension will remain in effect until Secretary's Office receives payment for the civil penalty. The license certificate will be delivered to the licensee by United Parcel Service within three business days of receipt of payment.

The payment may be delivered by mail, overnight delivery service, or in person. If the licensee intends to pay in person, Secretary's Office must be notified in advance of arrival at our Albany office. Payment **must** be made by certified/bank/teller's check or money order and delivered to:

Secretary's Office
New York State Liquor Authority
80 South Swan Street, Suite 900
Albany, NY 12210

The licensee cannot pick up the license certificate, or the new license certificate, at the Authority's offices. The licensee cannot resume licensed activities until it has received its license certificate and posted it at the licensed premises in the manner required by the ABC law.

- Conditional No Contest offers

If the Full Board accepts the licensee's Conditional No Contest offer, the licensee will have 28 days to submit payment of any civil penalty that is due. Failure to pay the civil penalty by that date will result in the imposition of an alternate penalty of revocation and bond claim.

- Counteroffers made by Full Board

If the Full Board rejects a licensee's Conditional No Contest offer, it may issue a counteroffer to the licensee. If the licensee wants to accept the counter-offer, the licensee must advise Secretary's Office by email at Secretarys.Office@sla.ny.gov. If the counteroffer provides for a civil penalty rather than cancellation or revocation of the license, the civil penalty must be paid within 28 days of the acceptance of the counteroffer. If payment is not received by that date, an alternate penalty of revocation and bond claim will be imposed.

- New conditions on method of operation

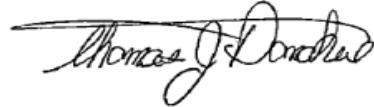
If a disciplinary proceeding that involves a summary suspension based on COVID-19 related charges is resolved with the addition of new conditions on the operation of the licensed premises (for example, hours restrictions or music restrictions), those conditions will become part of the approved method of operation. The license certificate delivered to the licensee after payment of the civil penalty will include those new conditions. The conditions will remain in place even if state or local COVID-19 directives change.

The licensee, however, will be able to request that new conditions be removed or modified once all Executive Order restrictions imposed on the operation of licensed establishments due to the COVID-19 pandemic have been removed. Licensees will not have to file the standard change of method of operation application. The Authority will utilize a separate process that will delegate power to the Licensing Board and allow for the prompt review of these requests. The Licensing Board shall approve any such request provided that (a) the licensee is not the subject of any disciplinary matter that is based on conduct that occurs after the COVID-19 related restrictions were imposed, or (b) the Authority has not received any report alleging that, subsequent to the return of the license, the licensee has violated any COVID-19 related Executive

Order. Any request that cannot be approved by the Licensing Board shall be forwarded promptly to the Full Board for consideration.

This matter was heard and determined by the Members of the Authority at a Special Full Board meeting held on September 16, 2020 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written advisory was approved by the Members of the Authority on September 16, 2020.

Dated: 9/16/20

A handwritten signature in black ink, appearing to read "Thomas J. Donohue". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Thomas J. Donohue
Secretary to the Authority