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MAKING FINDINGS OF FACT AND PREPARING A DECISION

Patrick J. Borchers [1]

Introduction

The California Supreme Court once described findings in administrative adjudication as a device to " bridge the analytical gap between the raw evidence and the ultimate decision or order." [2] Many things, of course, are peculiar to California, but the duty of administrative agencies to explain their decisions (at least those decisions that are adverse to a private party) in writing is not. In fact, the duty is one that is pervasive in administrative law, including both federal and New York administrative practice.[3]

No one is exactly sure where the doctrine comes from. Differing sources have been proposed, including the due process clause, administrative common law and various statutes. [4] The federal courts demand written findings and reasons, despite the absence of any obvious statutory source for the duty.[5]

For New York administrative agencies the requirement has a more obvious source. At least in cases that qualify as an " adjudicatory proceeding " under State Administrative Procedure Act (SAPA) § 102, [6] and even in other contexts, [7] SAPA § 307 requires:

> A final decision, determination or order adverse to a party in an adjudicatory

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[2]*Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974).

[3]*See, e.g., Dunlop v. Bachowski*, 421 U.S. 560 (1975); *United States v. Chicago*, M.St. P & P RR. 294 U.S. 499 (1935); *Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C. Cir. 1978); *Simpson v. Wolansky*, 38 N.Y. 2d 391 (1975).

[4]*See generally, Shapiro & Levy*, Heightened Scrutiny of the Fourth Branch: Separation of Powers and the Requirement of Adequate Reasons for Agency Decisions, 1987 Duke L.J. 387.

[5]*See, e.g., Matlovich*, 591 F.2d 852.

[6]*Vector East Realty Corp. v. Abrams*, 89 A.D. 2d 453 (1982) (statute calling for a "hearing" does not trigger article 3 of SAPA).

[7]*See, e.g., Simpson v. Wolansky*, 38 N.Y. 2d 391 (1975) (findings required in a case predating enactment of SAPA); *Mary M. v. Clark*, 118 Misc. 2d 98 (1983) (finding required as an element of procedural due process). Thus, the requirement of findings appears to be substantially the same in New York, regardless of whether the case arises under article 3 of SAPA or not, although most of the reported cases are governed by article 3.

proceeding shall be in writing or state in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Of course, knowing that there is such a requirement does not answer many questions from a practical standpoint. What purposes are served by such a requirement? From the perspective of an administrative decisionmaker, what suffices for " findings of fact and conclusions of law " or " reasons " for a decision? In light of the purposes of the requirement, what approaches are most likely to satisfy parties and reviewing courts? What, if anything is served by preparing findings, conclusions and reasons that are more extensive than necessary to comply with the statute? My aim in this paper is to shed some light on those questions, and to consider how they relate with the closely connected matters of evidentiary rulings and the doctrine of official notice.

I. The Boundaries of the Findings Requirement

As noted above, although SAPA § 307 codifies the findings requirement for New York administrative agencies, the doctrine is no less incumbent on agencies operating outside the ambit of an article 3 " adjudicatory proceeding. "[8] Over time, reviewing courts have suggested many rationales for the rule that agencies explain themselves when operating in a quasi-judicial capacity.

The most commonly articulated rationale is that findings are necessary to allow for judicial review.[9] It is, of course, axiomatic that some explanation for an agency decision is of great assistance to a reviewing court. The lack of any explanation would require a reviewing court to make an entirely unfocused review of the record, leaving the court to speculate as to the agency's rationale.[10]

There are, however, several other purposes served by requiring findings, each of which sheds some light on the proper approach for an agency in making findings. First, and closely related to the judicial review rationale, is that findings ensure that agencies confine their decisions to evidence in the record, and avoid considering matters outside the

[8] *See supra* note 6 and accompanying text.

[9] *See, e.g., Moutauk Improvement v. Proccacino*, 41 N.Y. 2d 913 (); *Neshaminy, Inc. v. Hastings*, 64 A.D. 2d 830 (1978).

[10] *See, e.g., Neshaminy*, 64 A.D. 2d 798 (lack of any findings or explanation for decision to deny permit for live entertainment license warrants reversal and remand to the agency for further consideration).

record. [11] Second, requiring administrative agencies to explain their decisions in writing requires the agency to focus on the evidence before it, as opposed to reaching a purely " gut level " decision. [12] Third, requiring the agency to make findings has a process-based value as well. A losing party is more likely to feel that he was treated fairly if the outcome of the adjudication is supported by a careful statement of findings or reasons.[13] Fourth, requiring the agency to state reasons for its decisions limits the issues in any subsequent litigation by confining review to those reasons proferred by the agency.[14]

Employing these rationales, New York courts have evaluated the sufficiency of agency statements of findings or reasons in a variety of contexts. At one end of the spectrum, reviewing courts have routinely set aside administrative determinations that completely lacked a written explanation. Thus, in *Neshaminy, Inc. v. Hastings*,[15] the court set aside the refusal to grant a permit to allow live entertainment and dancing at a bar where the only explanation for the denial was offered after the decision and a judicial proceeding challenging the denial had commenced. In *Spetalieri v. Quick*,[16] a police officer disciplinary matter was remanded to an agency because of a complete failure to make any findings. Similarly, in *Mary M. v. Clark*, [17] the failure of a public university's student disciplinary committee to make findings and deliver them to the student warranted a remand to the committee for further consideration.

At the other end of the spectrum, New York courts have routinely noted that the findings need not cover every procedural ruling or contention debated during the proceedings. Thus, in *Marcus v. Ambach*, [18] the appellate division refused to disturb an agency determination revoking a podiatrist's license because the agency did not document in its findings rulings on each procedural matter raised during the hearing.

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[11] *See, e.g., Simpson*, 38 N.Y. 2d 391.

[12] *See generally, Shapiro*, Heightened Scrutiny, *supra* note 2.

[13] *See Maschaw*, Administrative Due Process: The Quest for a Dignitary Theory, 61 B.U.L. Rev. 885, 888 (1981).

[14] *See, e.g., Parkmed Associates v. New York State Tax Comm'n*, 60 N.Y. 2d 935 (1983); *Moutauk*, 41 N.Y. 2d 913; *Galisano v. Town Board the Town of Macedon*, 31 A.D. 2d 85 (1968).

[15] 64 A.D. 2d 798 (1978).

[16] 96 A.D. 2d 611 (1983).

[17] 118 Misc. 2d 98 (1983).

[18] 136 A.D. 2d 778 (1988).

Similarly, in *Kirsch v. Board of Regents of the State University of New York*,[19] the appellate division refused to disturb an agency determination revoking a license to practice medicine because the findings did not expressly consider all of the contentions raised by the petitioner during the hearing.

Predictably enough, the illuminating case law falls between these two poles. Taken together, these cases provide some guidance on the scope of an agency's duty.

In *Shermack v. Board of Regents of the State University of New York*,[20] the administrative adjudication involved the revocation of petitioner's license to practice pharmacy. The petitioner had been accused of selling prescription drugs, such as antibiotics and Valium, without prescriptions. The petitioner's defense was that he had obtained oral prescriptions to dispense the drugs. On this crucial point, the findings simply stated that " petitioner dispensed, without a prescription [the drugs] . . . in an unlabelled container. "[21] Although upholding the findings as " minimally adequate, " the appellate division offered the following cautionary comments:

> Although no indication is given as to whether [the agency] credited petitioner's assertion . . ., this is clearly implied. It would have been better if the [agency] had explicitly commented on the petitioner's defense, but <u>in the relatively simple context of this case the factual findings are minimally adequate</u>.[22]

In *New York Department of Civil Service v. State Human Rights Appeals Board*,[23] the issue was the validity of an agency's findings of probable cause to believe that an employer has discriminated in its employment practices. The finding simply stated that " there is probable cause to believe that respondents have engaged in discriminatory practices. " Again, although not overwhelmed by the findings, the appellate division upheld them as " sufficient " given the relative simple factual context.

Agencies have not; however, always been successful in defending

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[19] 79 A.D. 2d 823 (1980).

[20] 64 A.D. 2d 798 (1978).

[21] <u>Id.</u> at 799.

[22] <u>Id.</u>

[23] 64 A.D. 2d 999 (1978).

minimalist findings. In *Moutauk Improvement v. Proccacino*,[24] the issue was the validity of the agency decision to refuse to allow certain partnerships to file a combined tax return. The finding simply stated that " it is the policy of the Tax Commission not to permit or require a combined return where taxation on an individual basis produces a more proper result. " This " finding," the Court of Appeals concluded, was so void of specificity as to amount only to a " mere conclusion " and was inadequate.

In *Galisano v. Town Board of the Town of Macedon*,[25] the petitioner had sought to construct a mobile home park. Previously, the town had allowed 3,000 square foot lots, but during the pendency of petitioner's application, inexplicably changed the minimum to 20,000 square feet. The town then denied petitioner's long-delayed application, but did not purport to rely on the new square footage requirement; instead, the board simply intoned that the requirements of " public health, safety and general welfare " forced it to deny the application. Upset generally at the town's conduct, the appellate division, in a strongly-worded opinion, concluded that the " findings " were nowhere near the level of specificity required under the circumstances.

In *Koelbl v. Whalen*,[26] the administrative adjudication involved multiple alleged infractions by a nursing home. The court concluded that findings such as " petitioners did not always provide adequate nursing service orientation " and did not " provide adequate dietetic service " and did not " adequately implement[] the policies of the nursing home, " accompanied by citations to the transcript, were too void of specificity. The findings, the court reasoned, were essentially legal conclusions, not the resolution of factual matters. Accordingly, remand was required because the findings did " not permit intelligent challenge or review. "

In at least three other circumstances, courts have concluded that written findings or reasons have a special role. First, in cases in which agencies depart from past precedent, agencies must explain their rationale carefully.[27] Although not bound in a strict sense by *stare decis*, agencies are under a special duty to explain themselves where they depart from an established line of decisions.

Second, one of the most difficult continuing issues in administrative adjudication is review of cases in which there is intra-agency conflict; the full agency

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[24] 41 N.Y. 2d 913 (1977).

[25] 31 A.D. 2d 85 (1968).

[26] 63 A.D. 2d 408 (1978).

[27] *See, e.g., Charles A. Field Delivery Services, Inc. v. Roberts*, 66 N.Y. 2d 516 (1985); *Claim of Casey*, 140 A.D. 2d 925 (1988).

overrules the factual findings of a hearing officer or ALJ.[28] This circumstance presents difficult institutional tensions because it is the agency that is entitled to deference, but it is the hearing officer or ALJ who had the opportunity to observe the witnesses and is presumably in the best position to make a determination as to credibility.[29] New York courts have settled this tension by continuing to review the decision of the agency under the deferential " substantial evidence " standard, but giving considerable weight to the findings of the hearing officer.[30] However, in cases in which the hearing officer and the agency disagree, the hearing officers' findings seem more likely to ultimately prevail during judicial review if they appear careful and thorough.[31] More recently, Governor Cuomo's Executive Order 131 specifically addressed this point, requiring that agency decisions in conflict with those of hearing officers " set forth in writing the reasons why the head of the agency reached a conflicting decision. "[32]

Third, it is a fundamental precept of administrative law that the person actually making the decision must have some rudimentary familiarity with the factual basis of the dispute.[33] In most cases, the hearing officer making the decision will have heard the testimony and seen the evidence first hand. Occasionally; however, the resignation of a hearing officer before a decision is rendered will necessitate a decision by another officer. In circumstances such as these, careful and thorough findings by the new officer are vital to preserving the decision if judicial review is sought.[34]

From all of this, it is possible to distill some legal principles to guide administrative decision writing. Notably; however, there are few blackletter rules. Perhaps the only such rule is that if an agency makes <u>nothing</u> in the way of written findings or reasons the matter will find its way back to the agency for further consideration. But, determining how much more than nothing is required necessarily requires resort to less precise formulae.

The cases make fairly clear; however, the findings must be sufficient to

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[28] *See, e.g., Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951).

[29] *Berenhaus v. Ward*, 70 N.Y. 2d 436, 443 (1987).

[30] *See, e.g., Simpson*, 38 N.Y. 2d 391; *Henry v. Wilson*, 85 A.D. 2d 885 (1981) (hearing officer's findings entitled to great weight even when overruled by the full agency).

[31] *See supra* note 29.

[32] *New York Executive Order 131* § II(f) (Dec. 4, 1989).

[33] *See, e.g., Morgan v. United States*, 298 U.S. 468 (1936).

[34] *See, e.g., Rothkoff v. Ratner*, 104 Misc. 2d 204 (1980).

make the agency's reasoning transparent. If multiple grounds are urged as a basis for a decision, each must be stated in order to receive consideration. " Findings " that do nothing more than restate the ultimate conclusion are good candidates for reversal upon review. Findings; however, that distill the agency's thought process, for instance by identifying credible witnesses or authoritative experts,[35] or recite carefully the policy reasons guiding the interpretation of a statute,[36] are more likely to earn deference.

The level of required specificity also varies with the complexity of the case. In a very simple case that clearly turns upon no factor other than the credibility of two conflicting witnesses, very short findings may be adequate, if not necessarily advisable.[37] In cases involving multiple factual and legal issues, much more is required.[38] Complexity is not the only variable in the equation. Other factors, such as a departure from agency precedent, intra-agency conflict or a decision by a replacement officer demand more extensive explanation. In the next section of this paper I endeavor to explain some of these principles in the context of a hypothetical case.

II. A Hypothetical Case[39]

Assume that the legislature has recently enacted a statute requiring that the license of any dentist be revoked for " unprofessional conduct. " The legislature also provides that the Board of Dental Examiners (" the agency ") has the authority to bring enforcement actions and adjudicate revocation hearings, subject to the ordinary strictures of judicial review.

Soon after the statute is passed, an enforcement action involving a dentist comes before the agency, and is referred to a hearing officer. Because the enforcement action is brought so soon after the passage of the statute, there are no

[35] *Power Authority of the State of New York v. Williams*, 101 A.D. 2d 659 (1984).

[36] *Cf. Howard v. Wyman*, 28 N.Y. 2d 434 (1971) (agency interpretations of enabling statutes are generally entitled to deference); *Waclawski v. Axelrod*, 151 A.D. 2d 977 (1989) (same).

[37] *See supra* notes 19-22 and accompanying text.

[38] *See supra* notes 23-25 and accompanying text.

[39] This is loosely based on *Megdal v. Oregon State Board of Dental Examiners*, 605 P.2d 273 (Or. 1980).

regulations defining the term " unprofessional conduct. "[40] Dr. Megdal operates a practice that employs several dentists near the state border, and has offices both in New York and New Jersey. New Jersey malpractice insurance premiums are substantially lower than New York malpractice insurance premiums. The agency claims that Dr. Megdal listed several dentists who practice in the New York office on his New Jersey policy in order to take advantage of the lower premiums. Dr. Megdal denies that he made any misrepresentations to his insurer and further claims that even if he did defraud his insurer, such misrepresentations do not constitute " unprofessional conduct " within the meaning of the statute.

At the hearing the only witness for the agency is Ms. Omnes, a former hygienist for Megdal in the New York office, who testified that two of the dentists listed on Megdal's 1990 New Jersey policy worked almost exclusively in the New York office during that year, and that Megdal falsified time and patient records to make it appear as though they worked in New Jersey.

Megdal testified on his own behalf that although the dentists in question filled in at the New York office occasionally, they spent " at least 80% " of their working time in the New Jersey office, and produced patient records that corroborate the statements, although these are the records that Omnes maintains were falsified.

Plainly, therefore, this case confronts the hearing examiner with two issues. One issue is purely factual: Is Omnes or Megdal telling the truth? Assuming the first issue is resolved against Megdal, the second issue is purely legal: Do misrepresentations to a malpractice insurer constitute " unprofessional conduct " within the meaning of the statute?

In drafting findings or an opinion, the hearing officer has some broad choices as to style. The officer can, for instance, choose to draft enumerated " findings of fact " and " conclusions of law. "[41] Or the officer can write a more synthesized document that resembles a trial court or appellate opinion.[42] Either route is acceptable as long as it communicates enough information to meet the standards discussed above.[43]

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[40] A colorable argument can be made that a term as vague as "unprofessional conduct" renders the statute unenforceable until implementing regulations are adopted, and this is what the court held in *Megdal*, 605 P.2d 273. It is not entirely clear whether New York courts would follow *Megdal*, but they appear to be moving in this direction. *See Nicholas v. Kahn*, 47 N.Y. 2d 24 (1979) (rules regarding conflicts of interest for public employees cannot vest "unfettered discretion" in the agency to grant exemptions from their operation).

[41] W. Fox, *Understanding Administrative Law* 197-201 (1986) (describing drafting alternatives).

[42] *Id.*

[43] *Id.*

Turning to matters of substance, the question becomes: What should the hearing officer write? At the most elementary level this depends upon how the officer resolves the two issues noted above. A cautionary note is in order here. Of course, if Megdal prevails at the agency level and there are no other private parties to the matter, a simple determination that Megdal's license should not be revoked may suffice, because there is no " determination or order adverse to a party " [44] to trigger a findings requirement and judicial review. However, even if a hearing officer is inclined to rule in favor of Megdal, written findings are highly advisable because of the weight they carry during judicial review in the event that the agency reverses the hearing officer.

Of course, if the hearing officer is inclined to rule in favor of the agency, then findings are an absolute necessity, because there is then a " finding or order adverse to a party, " [45] assuming that the agency agrees. If the officer concludes that the agency should prevail, it might be tempting to write something as brief as: " It is found that Dr. Megdal engaged in unprofessional conduct and his license shall be revoked. " Such a " finding; " however, probably does not pass muster.[46] The most notable problem is the basis for the decision is unclear. By implication it appears to mean the hearing officer both agreed with the agency's statutory construction argument and credited the agency's witnesses. However, although reviewing courts will occasionally accept such findings by " implication," [47] findings so cursory as to amount to " mere conclusions " invite reversal.[48]

An opinion such as " I credit the testimony of Ms. Omnes; therefore, I conclude that Dr. Megdal engaged in unprofessional conduct " is no better. The most obvious problem is that unless corrected by the agency, this leaves the proper interpretation of the statute in doubt. Since Megdal has made two alternative arguments for avoiding revocation, ruling on only one of them virtually necessitates reversal and remand.

To correct the problem, therefore, the officer might write something like: " I find that Ms. Omnes' testimony is credible and that misrepresentation took place. Moreover, I conclude that such misrepresentations constitute unprofessional conduct. " This, of course, is a vast improvement. It is undoubtedly sufficient and explicitly resolves both grounds for Megdal's challenge, allowing a substantive defense of the decision on

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[44] SAPA § 307.

[45] *Id.*

[46] *See, e.g., Shermack,* 64 A.D. 2d 798.

[47] *See, e.g., Shermack,* 64 A.D. 2d 798.

[48] *See, e.g., Koelbl,* 63 A.D. 2d 408.

review.

But even this opinion has some substantial deficiencies. As to the matter of credibility, it is tempting to say that since credibility findings are generally unassailable on judicial review,[49] no further elaboration is required. Although credibility determinations are generally unassailable in reviewing courts, they are most decidedly reviewable by the full agency.[50] Beefing up factual findings with some detail, therefore, has the two-fold effect of making it less likely that the agency will disturb them, and giving them greater weight if the matter eventually becomes subject to judicial review. Thus, although certainly not required,[51] some degree of factual detail is highly desirable. For instance, the opinion might discuss why the officer decided to credit Ms. Omnes' testimony and discredit Megdal's. Perhaps there were inconsistencies in Megdal's story; perhaps Omnes' testimony was corroborated by other evidence. All of these details not only make for more interesting reading, they help sustain the findings throughout the process.

As for the conclusion that the statute encompasses malpractice insurance fraud, some further elaboration is also desirable. The agency's reading of the statute is entitled to deference, but elaboration also serves two goals in this context. First, although the agency is free to reverse the officer's construction of the statute, some explanation for the result reached helps preserve the opinion from attack at the agency level. Second, of course, the great majority of ALJ and hearing officer opinions are adopted *en toto* by the agency, and having some reasoned explanation for the agency's interpretation increases the degree of deference accorded to that interpretation.[52] So, for instance, the opinion might reason that insurance fraud might conceivably threaten the quality of patient care.[53] Or, the opinion might point to persuasive legislative history, if any is available.

Of course, the busy schedules and limited resources of ALJs and hearing officers do not allow for the writing of a treatise on every matter. But some modest explanation beyond the bare minimum can go a long ways toward improving the fairness and stability of administrative adjudication.

III. Two Closely Related Matters: Evidentiary

[49] *See, e.g., Berenhaus*, 70 N.Y. 2d 436.

[50] *See, e.g., Universal Camera*, 340 U.S. 474.

[51] *Cf. Shermack*, 64 A.D. 2d 798.

[52] *See*, A. Bonfield & M. Asimow, *State and Federal Administrative Law* 596 (1989).

[53] *See infra* notes 58-61 and accompanying text for discussion of official notice.

Rulings and Official Notice

Before concluding, two other matters, both of which can affect the manner in which the findings or opinion is prepared, deserve some special mention. One is the matter of evidentiary rulings, the other is the doctrine of official notice.

It is perfectly clear that agencies are entitled to admit and consider evidence that would not be competent in a court.[54] Moreover, New York no longer follows the discredited " legal residuum " rule, which required agencies to ultimately base factual findings in technically competent evidence.[55]

Agencies and hearing officers; however, should not mistake this broad discretion for license. If strongly probative evidence, and weak evidence (hearsay, for instance), both support a factual finding it is very good practice to explicitly ground a finding in the stronger evidence. This point was illustrated dramatically in *Muttari v. Town of Stony Point.*[56] In *Muttari* the issue was whether a police officer was medically disabled and, therefore, entitled to benefits. The police officer's personal physician testified on his behalf; another treating doctor testified on the town's behalf. The hearing officer, however, also admitted various written doctor's reports tending to show that the police officer was not disabled.

The hearing officer found that the officer was not disabled; this decision was upheld by the town board. The appellate division set aside the decision; however, concluding the " hearsay " written reports were unduly prejudicial to the police officer. Although it was not error to admit the reports, the court considered them to be of weak probative value. Had the hearing officer simply credited the testimony of one doctor over the other, however, there seems little doubt that the decision would have been upheld because New York courts routinely note that agencies are free to resolve conflicting expert testimony.[57] In *Muttari,* the failure to explicitly ground the findings in the stronger evidence apparently left the impression the written reports were dispositive and resulted in relief for the petitioner.

Another reason for treading carefully comes about if the hearing officer or agency concludes that evidence is not admissible even under the relaxed standards

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[54]*See, e.g., Berenhaus,* 70 N.Y. 2d 436.

[55]*See Eagle v. Patterson,* 57 N.Y. 2d 831 (1982); *300 Gramaten Ave. Ass'n v. State Division of Human Rights,* 45 N.Y. 2d 176 (1978).

[56]99 A.D. 2d 838 (1984).

[57]*See, e.g., Power Authority of the State of New York v. Williams,* 101 A.D. 2d 659 (1984).

applicable to administrative agencies. In this circumstance it is good practice to note this in the findings, and, if the ruling is central to the resolution of the case, to point to the admissible evidence upon which the finding is based. This will avoid the impression that the agency has considered matters outside the record, which is a certain ground for relief in an Article 78 proceeding.[58]

The doctrine of official notice also presents some traps for the unwary that can be avoided with carefully crafted findings. Agencies are entitled to take official notice not only of factual matters that are beyond reasonable question (such as the Alamo is in Texas), but matters peculiarly within the agency's expertise as well.[59] For instance, in the hypothetical case, the proposed reasoning that malpractice insurance fraud can ultimately impact patient care is a matter that is doubtlessly within the agency's competence as a matter of official notice. However, failure to employ this power properly can result in reversal.

In *Cohen v. Ambach,*[60] an agency revoked a chiropractor's license for engaging in solicitation that was " not in the public interest. " The only witnesses at the hearing were percipient. The appellate division remanded to the agency because of two apparent flaws in the process. First, the agency had not explicitly stated that it was taking official notice of what types of advertising are in the public interest. Second, by not giving the petitioner notice of the fact that it intended to take official notice on the matter, the agency improperly denied the petitioner the right to rebut,[61] presumably through expert testimony.

If a hearing officer discovers during the preparation of findings or an opinion that it is necessary to take official notice, the officer should reopen the proceedings to allow the parties a chance to put on any contrary evidence. Assuming that any contrary evidence is not persuasive, the finding should clearly reflect what matters have been the subject of official notice and why any rebuttal evidence was not persuasive. This procedure, although somewhat cumbersome, is less cumbersome than the inevitable remand if the official notice issue is not addressed explicitly.[62]

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[58]*See, e.g., Spetalieri v. Quick,* 96 A.D. 2d 611 (1983).

[59]*State Administrative Procedure Act* § 306(4).

[60]112 A.D. 2d 497 (1985).

[61]The right to rebut is guaranteed by *State Administrative Procedure Act* 306(4), and probably by the due process clause as well. *See, e.g., Davis & Randall, Inc. v. United States,* 219 F. Supp. 673 (W.D.N.Y. 1963) (Friendly, J.); *Franz v. Board of Medical Quality Assurance,* 31 Cal. 3d 124 (1982).

[62]*See, e.g., Cohen,* 112 A.D. 2d 497.

Conclusion

The duty of agencies to explain their quasi-judicial decision with findings or reasons is fundamental and pervasive in administrative law. Although findings, opinions or reasons need not be elaborate, explanations beyond the bare minimum serve a host of laudable goals, including the fairness and stability of administrative adjudication. Some special circumstances call for more extensive reasons. In cases of intra-agency conflict, departures from agency precedent and mid-adjudication changes in hearing officers, far more extensive reasons or findings are necessary. In other delicate matters, such as hearings involving difficult issues of evidence, marginally probative evidence and the necessity for the taking of official notice, carefully crafted findings can avoid a costly and time-consuming remand.