bers of the fire department on duty for more than an average of seventy-two (72) hours a week up to the fire chief, the assistant chief, or another officer in charge of the fire force and it is my opinion that, since this is directed to an emergency situation, the judgment of such officer as to what is or is not an "emergency" would be final.

If the judgment of the authorized official is being abused, such official would be subject to removal by the appointing authority.

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OFFICIAL OPINION NO. 16

June 3, 1955

Dr. C. A. Frech, Secretary
Ind. State Board of Dental Examiners
Gary National Bank Building
Gary, Indiana

Dear Doctor Frech:

Your letter has been received requesting an Official Opinion on the following question:

"The legality of filing claims for monies advanced to patients or investigators for the purpose of obtaining evidence against suspected violators of our dental practice act."

Supplementing your request you have herewith forwarded copies of certain correspondence between you and the State Board of Accounts regarding the legality of such claims. From such correspondence it is not clear whether these types of claims are questioned on the basis of lack of authority or upon legality of such investigation procedure.

The statute governing the licensing and regulation of the practice of dentistry in this state is Acts of 1913, Ch. 138, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-501 et seq. Under the provisions of said statute, the practice of dentistry is defined; authority is given for the issuance and revocation of licenses; the administration and enforcement of the act is placed in said board; and injunction
and criminal actions are provided for the enforcement of the provisions of said act. Acts of 1913, Ch. 138, Sec. 11, as found in Burns’ Indiana Statutes (1951 Repl.), Section 63-511, among other things, provides:

“* * * and said board may employ a clerk and such other person, or persons, as may be necessary in the discretion of the board, to enable said board to properly carry out and enforce the provisions of this act, and said board shall allow and pay out of its own funds a reasonable compensation for such work. * * *”

You state your Board has an appropriation in your budget for Samples and Evidence. It would, therefore, appear from the foregoing that your Board has authority to employ persons to make such investigations by means of such persons presenting themselves in the office or establishment of the suspected unlawful practitioner to determine if such practitioner makes himself available to such investigator for performance of dental service. If this happens to be a dental laboratory, which is actually practicing dentistry, as I understand your procedure, the investigator has the laboratory make the impression of his gums for plates and thereafter returns and has the same physically fitted by the unlawful practitioner, in order to determine the manner and extent of such practice. Such procedure would necessarily require the ordering and payment for such plates.

If the above procedure is followed so as to afford evidence to the Board of the actual practice such man is engaged in, in my opinion, it would be legal and the evidence obtained admissible in later proceedings before the Board or the Court, if no persuasion was used to induce the illegal action.

It has been held that such practice is legal and does not come within the entrapment rule of evidence unless there is some device used to induce an innocent man to commit a crime or offense.

Smith v. State (1938), 214 Ind. 169, 172, 13 N. E. (2d) 562;

Ditton v. State (1943), 222 Ind. 25, 51 N. E. (2d) 356;
1955 O. A. G.

Torrell v. State (1929), 89 Ind. App. 125, 127, 128, 166 N. E. 8;
Shacklett v. State (1925), 197 Ind. 323, 326, 150 N. E. 758;
Cosilito v. State (1925), 197 Ind. 709, 712, 151 N. E. 721;
Spurgeon v. Rhodes (1906), 167 Ind. 1, 9, 78 N. E. 228;

I am, therefore, of the opinion, that such claims are legal and valid and within the authority of said Board providing money for their payment is available and the same is properly appropriated and providing, of course, such investigation was made in a manner not to violate the entrapment rule herein considered.

OFFICIAL OPINION NO. 17

June 6, 1955

Major General H. A. Doherty
Adjutant General of Indiana
212 State House
Indianapolis, Indiana

Dear General Doherty:

This is in reply to your inquiry in which you requested an Official Opinion as to the following:

"* * * an opinion based on House Bill 98, approved March 13, 1953, which placed the Soldiers and Sailors Monument and the Indiana World War Memorial under the Office of the Adjutant General, as to whether by direction of the Governor, the Adjutant General could:

"1. Either eliminate the Soldiers and Sailors Monument Board and transfer this responsibility to the present World War Memorial Board, or combine the two."