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2 BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
3 ON REFERRAL BY THE COMMISSIONER OF THE DEPARTMENT  
4 OF HEALTH AND SOCIAL SERVICES

4 In the Consolidated Matters of )  
5 )  
6 IMAGING ASSOCIATES OF )  
7 PROVIDENCE )  
8 \_\_\_\_\_ )

OAH No. 06-0743 & 06-0764 DHS

8 **STAFF'S PROPOSAL FOR ACTION**

9 Pursuant to the Administrative Law Judge's ("ALJ") notice regarding her  
10 proposed decision, the staff submits the following Proposal for Action. The Staff  
11 requests that the Commissioner accept the ALJ's decision granting the Staff's Cross-  
12 Motion for Summary Judgment and denying Imaging Associates of Providence's  
13 (IAP) Motion for Summary Judgment. The net effect of accepting this decision is that  
14 IAP is an Independent Diagnostic Testing Facility and is required to obtain a CON for  
15 its imaging facilities in Wasilla and Anchorage facilities. Despite agreement with the  
16 ultimate conclusion, the Staff requests that the decision be amended as follows:  
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18 1. That any reference to the possible merit or success of an estoppel  
19 argument by IAP, should they apply for a CON and be denied, should be removed from  
20 the opinion as advisory. *See, Jefferson v. Apslund*, 458 P.2d 995, 1001-1002 (Alaska  
21 1969).

22 2. Additionally, the decision should be amended to specifically  
23 address how to implement this decision by articulating what are the time frames for  
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25 Staff's Proposal for Action

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2 IAP to submit their CON, whether IAP should remain open during the pendency of the  
3 application, whether any condition should be imposed such as repayment of Medicaid  
4 dollars reimbursed to the facility during the time it was open despite the Department's  
5 determination that a CON was required, whether statutory authority to seek injunctive  
6 relief should be used if a CON is not filed within the specified time, and whether any  
7 of this should occur on an expedited basis and if so, what are those terms.  
8

9 DATED this 20<sup>th</sup> day of November, 2007.

10 TALIS J. COLBERG  
11 ATTORNEY GENERAL

12 By:



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail, and emailed, postage prepaid, this 21<sup>st</sup> day of November, 2007.

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