

FILED

December 10, 2014

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JESERY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of the Suspension
Or Revocation of the License of:

STEVEN C. BRIGHAM, M.D.

SUPPLEMENTAL ORDER
ASSESSING COSTS

To Practice Medicine and Surgery
in the State of New Jersey

Consistent with the terms of our prior Order revoking the license of respondent Steven Brigham, M.D., filed on November 13, 2014, nunc pro tunc October 8, 2014, this matter was returned to the New Jersey State Board of Medical Examiners (the "Board") on November 12, 2014 solely to afford the Board an opportunity to review the Attorney General's application for costs and respondent's objections thereto, and to thereafter set the amount of costs that respondent is to be assessed in this matter.

The State's cost application is supported by two certifications prepared by the lead prosecutor, Senior Deputy Attorney General Warhaftig, dated October 6, 2014 and October 15, 2014. As detailed within those certifications, the Attorney General seeks a total cost award of \$482,738.59, to include \$28,438.00 in expert costs, \$17,497.60 in transcript costs, \$7,480.00 in video conference costs, \$23,002.49 in investigative costs and \$406,320.50 in attorney's fees.

Documentation supporting those costs, to include daily time sheets prepared by four Deputy Attorneys General who provided legal services in this matter, was provided for Board review. Individually, DAG Warhaftig billed a total of 1,402.1 hours of legal time, DAG Puteska a total of 111 hours, DAG Bengal a total of 641.2 hours and DAG Bajrami a total of 407.2 hours. In her initial certification, DAG Warhaftig provided a chronology summarizing the procedural history of this matter from the time the initial Verified Complaint was filed on September 8, 2010 through the date on which this matter was returned to the Board on October 8, 2014 for final decision.

On November 3, 2014, respondent's counsel, Joseph Gorrell, Esq., submitted a letter outlining Dr. Brigham's objections to the State's cost application. Dr. Brigham objected only to the attorney's fee portion of the cost application. Specifically, he objected to the State's request for costs for the attendance at trial of, in some cases, three different attorneys. Mr. Gorrell suggested that, as Dr. Brigham had been represented by one attorney alone, he should not be required to pay for services provided by more than one attorney on any given trial date. Additionally, Mr. Gorrell argued that no fee award should be made for any time entries that lacked any descriptive information.

By letter dated November 7, 2014, SDAG Warhaftig responded that, although she handled most of the trial proceedings,

Deputy Attorneys General Bengal and Bajrami conducted parts of the trial to include initial examination of the State's expert witness and the presentation of Dr. Shepard's status to the Court and the penalty hearing. She suggested that their availability at trial was important to enable her to make a cogent presentation. S.D.A.G. Warhaftig also pointed out that individual time sheets had been reviewed prior to submission to the Board and that reductions in the billable hours had in fact been made for duplicative efforts, for days at hearings when DAG Bajrami was present as an observer, for administrative tasks and for investigative activities related to allegations that were not ultimately charged (See Warhaftig Certification, October 5, 2014, ¶32). Those "redactions" reduced the aggregate billings by approximately \$37,000. Id.

Addressing respondent's objections to non-descriptive entries, SDAG Warhaftig noted that all time entries were preceded by a three letter code, intended to provide a general description of billed services.¹ DAG Warhaftig suggested that narrative entries were deemed necessary only where the three letter code itself was "unclear."

¹ In ¶28 of her certification, DAG Warhaftig explained that the symbol "CRW" stands for "research and writing"; the symbol "CCM" stands for "meeting or telephone conference"; the symbol "CDR" stands for "document review"; the symbol "CAD" stands for "administration of file"; the symbol "CMB" stands for "motion or brief writing"; the symbol "CDS" stands for "discovery", the symbol "CPR" stands for "preparation for hearing"; the symbol "CIV" stands for "investigation"; the symbol "CMS" stands for "miscellaneous"; the symbol "CTL" stands for "travel"; and the symbol "CAP" stands for "court appearance."

In reviewing the application for attorney's fees, we are guided by the general principles established in Rendine v. Pantzer, 141 N.J. 292 (1995) and recently reaffirmed in Walker v. Giuffre, 209 N.J. 124, 130 (2012). Specifically, we are required to establish a "lodestar" fee by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. In evaluating the reasonableness of hours, we are to "carefully and critically" evaluate the aggregate hours claimed, and we are required to eliminate duplicative or nonproductive time. See also Poritz v. Stang, 288 N.J. Super. 217, 221 (App. Div. 1996) (in evaluating reasonableness of actual hours expended, one must be mindful that "actual time expended does not necessarily equate with reasonable time."). An attorney seeking a fee award must prepare and provide a certification of services that is sufficiently detailed to allow for an accurate calculation of a lodestar. While "exactitude" is not required, the submission needs to include "fairly definite information as to the hours devoted to various general activities." Rendine, 141 N.J. at 337.

Starting with hourly rates sought, the Attorney General seeks compensation for attorney services at hourly rates ranging between \$175/hour for services provided by S.D.A.G. Warhaftig and D.A.G. Puteska (admitted to practice since 1981 and 1995 respectively) to \$135/hour for attorney services provided by D.As.G. Bengal and Bajrami. Respondent has not objected to the

hourly billing rates claimed for any D.A.G. We independently find the hourly rates charged for services provided by all DASG to be entirely reasonable (indeed, we recognize that the rates sought are well below market rates for comparably experienced attorneys in private practice), and thus fully allow that rate for purposes of the lodestar calculation.²

Turning to the hours claimed, we find that the vast majority of entries on the submitted time sheets include adequate descriptive detail to support the hours billed. In those instances, we were further satisfied that all billed hours were in fact reasonable. In limited instances, however, we were unable to determine precisely what services were provided on a given day (even factoring in for the use of the three letter codes), and we have concluded that a general reduction of 5% of the aggregate hours billed should be taken to address submissions where insufficient detail was provided to allow us to determine whether the hours claimed were in fact reasonable.

Additionally, while we are fully cognizant that this case involved issues of paramount public importance and thus supported - if not dictated - a substantial allocation of attorney resources,

² The specific rates for billings by Deputy Attorneys General are based on uniform rates detailed in a June 17, 2005 memorandum from Acting Director Nancy Kaplen, which specifies that legal services for any DAG with 0-5 years of legal experience are to be billed at \$135/hour, for any DAG with 5-10 years of experience at \$155/hour, for any DAG with 10+ years of experience at \$175/hour and for any Assistant Attorney General at \$200/hour. Those rates have remained level since 2005, and are rates that we have consistently approved in previous fee applications.

it would appear that there may have been some "duplication" of services that occurred, given that the case was staffed with four attorneys. In lieu of conducting a day-by-day, entry-by-entry analysis, we have concluded that any "duplication" of services would more than adequately be redressed by reducing the attorneys' fee component of the cost application by an additional 10%.³

In the aggregate, then, we have concluded that cause exists to reduce the Attorney General's fee application by a total factor of 15%. Doing so results in a reduction of the aggregate attorneys' fees from \$406,320.50 to \$345,372.49, which in turn causes the total cost application to be reduced from \$482,738.59 to a revised total of \$421,790.52.⁴

WHEREFORE it is on this 10th day of December, 2014

ORDERED:

Respondent Steven Brigham is hereby assessed costs, to include expert, transcript, video conferencing and investigative

³ We note, however, that we do not perceive a need to disallow hours claimed for having multiple attorneys at trial (particularly given that the Attorney General did make redactions prior to submitting time sheets for any hours billed in an "observer" capacity). We view the Attorney General's staffing decisions to be an element of trial strategy that need not be second guessed, and we decline to follow respondent's suggestion that the Attorney General should be allowed to bill only for one attorney's presence at trial simply because respondent was then represented by one attorney.

⁴ As noted above, respondent did not object to any of the other items in the cost application, to include transcript costs, investigative costs and expert witness costs. Notwithstanding that fact, we point out that we have in fact independently reviewed those submissions and are satisfied that all costs are reasonable and appropriately assessed to respondent.

costs, and attorney's fees, in the aggregate amount of \$421,790.52. Payment shall be made within thirty days of the entry of this Order (on or before January 9, 2015) by certified check or money order payable to the State of New Jersey (or any other form of payment that may be explicitly approved by the Board) and forwarded to the attention of Bill Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton New Jersey, 08608, unless installment payments are sought from and approved by the Board prior to the date due. Failure to make timely payment of penalties and costs under this Order shall result in the filing of a certificate of debt, and such other proceedings as are permitted by law.⁵

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:



Karen Criss, C.N.M.
Board Vice-President

⁵ We note that no specific deadline for payment of the \$140,000 civil penalty assessed was included in our prior filed Order. To address that oversight, we will extend time for Dr. Brigham to make payment or to make arrangements for payment of the civil penalty through January 9, 2015 (to be coterminous with the deadline for payment of assessed costs). Payment of the assessed civil penalty is to be made in a manner consistent with the above requirements.