

FILED

January 30, 2004

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
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:

KHAJA NASEERUDDIN, M.D.
LICENSE NO. MA41882

TO ENGAGE IN THE PRACTICE OF
MEDICINE AND SURGERY IN THE
STATE OF NEW JERSEY

SUPPLEMENTAL ORDER

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") for consideration of the issue of the amount of costs to be assessed upon respondent Naseeruddin, which issue was specifically reserved at the time that we entered our initial order in this matter both to afford the Attorney General an opportunity to make a cost application and to allow respondent to submit written objections to any items sought to be recovered as costs by the Attorney General. Upon review of the multiple submissions made by the parties, we conclude that respondent is to be required to pay a total of \$10,200.00 in costs, consisting of the following cost assessments:

Costs	Amount Assessed
Transcript and Court Reporter Costs	\$ 735.00
Counsel Fees	\$ 9,465.00
TOTAL COSTS	\$10,200.00

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We set forth below a summation of the history of this matter (limited to submissions made in support of or opposition to the Attorney General's cost application) and the conclusions we have reached which support the within order.

DISCUSSION

The Attorney General submitted a certification detailing all costs that were being sought on August 5, 2003. Within said certification, the Attorney General documented that totals of \$735.00 in transcript costs (75.00 court reporter appearance fee and \$660.30 in transcript fees) and \$6,162.38 in counsel fees (for services from January 17, 2003 through July 8, 2003) had been incurred in the litigation of the case against Dr. Naseeruddin. On September 8, 2003, just prior to the scheduled consideration of the application for costs on its September 10, 2003 agenda, and subsequent to the established deadline for submission of a response to the cost application, the Board received a letter from respondent's counsel referring to an August 18th letter of objection, and requesting its submission to the Board. Although the Board had never received respondent's submission, in order to permit respondent to object to the cost application, the Board declined to fix the amount of costs to be assessed at its September 10, 2003 meeting. The Board held any decision on the amount of costs in abeyance, accepted respondent's submission and permitted the Attorney General to reply in writing.

We have now received and reviewed the multiple submissions from the parties. Respondent's letter brief received on September 8, 2003

outlines his objections to the Attorney General's initial certification of costs. Within said brief, respondent argued that the time records submitted list the gross amount of attorney time without supporting details, and that based upon the case of Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996) as the overall reasonability of the counsel fees cannot be analyzed, and that as the requirement of the Court Rules (specifically R.4:42-9(b)) that an affidavit of services addressing certain factors to determine the reasonableness of the fees has not been met, the fee application should be denied.

The Attorney General submitted a reply brief dated September 25, 2003, and revised certifications of two Deputy Attorneys General setting forth supporting detail of the legal work performed, and a revised schedule of hourly rates of compensation for Deputy Attorneys General. The Attorney General argued that the Board could impose counsel fees pursuant to established statutory authority and eschewed the case cited by respondent as applicable only to investigative costs. Nonetheless, the stated argued that the revised certifications submitted met the reasonableness standard of Stang, and of the Rules of Professional Conduct.

The Attorney General's supplemental certifications of costs, were supported by time sheets of DAG Warhaftig and an appendix consisting of caselaw and a schedule established in 1999 by the Department of Law and Public Safety as a uniform rate of compensation for the purpose of the recovery of attorneys fees (See, State v.

Waldron (Dkt. No. L-702-99 ([Law Div. December 4, 2001])). That schedule sets the hourly rate of a Deputy Attorney General with up to five years of legal experience at \$100.00 per hour, and with more than 10 years of experience at \$150.00 per hour. In his second supplemental certification, the Attorney General amended the amount sought in his fee application, by making adjustments for understatement of the hourly fees the net effect of which was an upward adjustment in the total amount of counsel fees sought from \$6,162.38 to \$8,465.00.¹

CONCLUSIONS AND ORDER

We note initially that, at this time, there is no dispute between the parties on the items sought for transcript costs in the amount of \$735.00. We turn, thus, to the only issue-whether or not sufficient supporting details have been supplied for the attorneys' fees sought, and whether the fees sought are reasonable. The initial Provisional Order of Discipline was filed on March 5, 2001.

¹The Attorney General's application for the time of Deputy Attorney General Warhaftig thus seeks \$150 per hour for the following activities:

Review of documents (CDR) -	4.5 hours
Research and writing (CRW)	7.0 hours
Motions/Briefs (CMB)	3.0 hours
Trial preparation (CPR)	5.0 hours
Appearance at trial (CAP)	5.0 hours
Misc activities	.4 hours
Total of 24.9 hours	

The application for DAG Simmons seeks \$100 per hour for the following activities:

Research and writing	46.5 hours
Telephone calls	6.5 hours
Document review	2.8 hours
Administrative work	.6 hours
Correspondence	.9 hours
Total of 57.3 hours	

Following Dr. Naseeruddin's response to the Provisional Order of Discipline, the State filed a reply on August 12, 2001. Subsequently, the State filed opposition to Dr. Naseeruddin's application for reconsideration, and to respondent's requests for a hearing in this matter. The State's certification do not include fees for any of these legal services. The cost application begins with the assignment of this matter in January 2003, to DAG Mary Kate Simmons and Assistant Section Chief DAG Jeri Warhaftig for preparation for hearing in this matter, which was held on April 23, 2003, followed by post-hearing submissions in June 2003, and an application for costs of August 6, 2003, and reply to respondent's response on September 25, 2003.

We note initially that respondent has lodged no objection to the hourly rates at which attorneys' fees were calculated, but rather focuses and limits his objections to the lack of specificity in the initial certifications supporting the application for costs. We are constrained to note however, that the rates charged by the Division of Law of \$100.00 per hour for DAG Simmons, and \$150.00 for DAG Warhaftig, have been approved in prior litigated matters, and appear to be well below the community standard.

Moreover, we find the application as supplemented to be sufficiently detailed to permit our conclusion that the amount of time spent, and the overall fees sought to be objectively reasonable as well. The expenditure of a total of less than eighty-three hours for review of documents, trial preparation, 5 hours of oral hearing,

preparation of motions and briefs, posthearing submissions and a costs application and response, appears to be reasonable and indeed modest in the circumstances of this matter, involving as it does the protection of the public safety and welfare in the context of allegations of repeated predatory behavior with patients and staff. Indeed, the Attorney General could have sought substantial additional fees for the written prosecution and defense of numerous applications which were made in this matter prior to January of 2003.

We find that the Attorney General has adequately documented the legal work which he performed, and find that the work documented was work necessary to advance the prosecution of this case. We are thus satisfied that the Attorney General has adequately delineated the tasks performed to support his application for counsel fees, and that the hours claimed are reasonable, particularly when viewed in the context of the scope of the action maintained against Dr. Naseeruddin. We find in the circumstances that the state's application for the numerous activities comprising the attorneys fees of \$9,465.00 to be reasonable.

In sum, we find that the Attorney General may be awarded attorneys fees in this case pursuant to N.J.S.A. 45:1-25, and we further determine that the Attorney General should be awarded all attorneys fees sought and transcript and court reporter costs.

WHEREFORE, it is on this 25th day of Nov, 2003

ORDERED:

Respondent Naseeruddin is hereby ordered to pay costs and

counsel fees incurred by the State in the amount of \$10,200.00. Such amount shall be paid within 30 days of the date of this Order, by certified check or money order payable to the Treasurer, State of New Jersey and delivered to Mr. William Roeder at the Office of the Board of Medical Examiners.

NEW JERSEY STATE
BOARD OF MEDICAL EXAMINERS

By:

A handwritten signature in cursive script, appearing to read "David Wallace M.D.", is written over a horizontal line.

David Wallace, M.D.
President