

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO. BDS 2945-09

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JOHN L. HOCHBERG, M.D.
LICENSE NO.: 25MA04163600

SUPPLEMENTAL ORDER
ASSESSING COSTS

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Consistent with the terms of our prior Order suspending the license of respondent John L. Hochberg, M.D., filed on July 25, 2016, nunc pro tunc July 13, 2016, which awarded costs, this matter was returned to the New Jersey State Board of Medical Examiners ("the Board") on August 10, 2016 solely to afford the Board an opportunity to review the Attorney General's certifications and specifications supporting costs and respondent's objections thereto, and to thereafter set the amount of costs that respondent is assessed in this matter¹.

The State's cost application is supported by two certifications prepared by Deputy Attorney General Kathy Mendoza, dated July 11, 2016

¹ The State's application for costs was submitted to the Board on Monday July 11, 2016 and entered into evidence, over the objection of Respondent (who argued that he had been given the document prior to the hearing), at the July 13, 2016 penalty hearing. The Board deferred setting an amount of costs to be awarded, allowed the State additional time to augment its application and provided time for Respondent to submit a written response, and/or certified tax returns to demonstrate hardship.

and July 25, 2016. As detailed within those certifications, the Attorney General seeks a total cost award of \$467,270.76, to include \$101,575.00 in expert fees, \$9,952.40 in transcript and court reporting costs, \$11,103.36 in investigative costs and \$344,640 in attorney fees. On August 3, 2016 respondent's counsel, Stephen Gravatt, Esq., submitted a letter outlining Dr. Hochberg's objections to the State's cost application.

We have reviewed the costs sought by the State and find the application sufficiently detailed as to the amounts we are awarding and the amount reasonable, given the length of time necessary to be expended given the complexity of the prosecution of this matter. Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the cost of the proceedings onto licensees who support Board activities through licensing fees. We are thus satisfied that the Attorney General's claims are generally reasonable, with limited exceptions, especially when viewed in the context of the seriousness and scope of the action maintained against the Respondent, the complexity of the case and the voluminous evidence in this matter. Our analysis follows:

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 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 the hourly rates sought, the Attorney General seeks compensation for attorney services at hourly rates of \$300/hour for services provided by D.A.G. Mendoza (admitted to practice since 1990). This hourly rate is consistent with the rates established in a directive of Michelle Miller, Acting Director of the Division of Law (the "Miller Directive") which became effective September 1, 2015.² Respondent objects to this billing rate and argues that D.A.G. Mendoza's actual salary supports a finding that her hourly rate should

² Government workers are salaried and not hourly wage employees. The Miller Directive specifies that the rate schedule was "... developed by first determining the general market rates in New Jersey for comparable legal services, which were derived from multiple sources of data. The resulting market rates were then reduced to ensure a conservative increase in the Division of Law's hourly rates and also to ensure that those rates are defensible as reasonable."

be less than \$50.00 and that the Miller Directive cannot be relied upon because it is an uncertified document which contains no analysis with regard to how the hourly rates were set.

We find that the hourly rate of \$300 for an attorney with more than 20 years of experience appears to be highly reasonable and at, or below, the community standard. We are aware that we may apply these rates retroactively to costs incurred before September 2015. Nonetheless, we have determined, in our discretion and in an effort to be eminently reasonable given that the attorneys fees sought cover a period of more than eight years, to utilize the rates in effect at the time the costs were incurred and take notice that prior to September 2015, the hourly rate for an attorney with more than ten years of experience was \$175.00.³

Turning to the hours claimed, the total time expended by the Division of Law in this matter was 1398.3 hours.⁴ DAG Mendoza billed only for her own work on this case, a total of 1148.8 hours. As a result, attorney fees have already been reduced by approximately 250 hours of time. We find that the vast majority of entries on the submitted time sheets and in the supplemental certification include adequate descriptive detail to support the hours billed. In those instances, we were further satisfied that all billed hours were in

³ The rate schedule prior to September 2015 did not have a separate rate for attorneys with more than 20 years of experience. The rates in both schedules have been approved by this Board in prior litigated matters and appear to be well below the community standard.

⁴ Documentation supporting those costs including daily time sheets prepared by two Deputy Attorneys General and two paralegals who provided legal services in this matter was provided for Board Review.

fact reasonable. In limited instances, however, we were unable to determine precisely what services were provided on a given day, and we decline to award costs for 118 hours of attorney time incurred prior to September 2015 to address submissions where insufficient detail was provided to allow us to determine whether the hours claimed were in fact reasonable.⁵ We find the remainder of the time records to be sufficient and reasonable and impose costs in the amount of \$89,600 for the period before September 2015. We find the time records for the period beginning September 1, 2015 to be sufficient and reasonable and impose costs in the amount of \$155,000 consistent with the rates in effect beginning September 2015. Thus, the total attorneys fees sought of \$344,640 shall be reduced by \$100,040.00 for a total award of \$244,600.00 in accord with the principles indicated above.

Certifications of costs for two experts were submitted by the Attorney General. In our discretion, we have decided not to impose fees for the expert Dr. Marcus as it is unclear what role he played in the prosecution of this matter. We award costs for Paul Goldberg, M.D. only. Further, a voucher for \$12,480 dollars from June 2004 was submitted as part of the cost certification for Dr. Goldberg - the voucher indicates that the services appear to have been provided in a different matter and these costs will not be imposed. The expert

⁵ For example, among other things, we considered entries where the activity description was limited to "organize file," "blurb," "calls" and "document review" to be insufficient and do not award costs for the corresponding time billed.

costs sought of \$101,575.00 shall therefore be reduced by \$14,950.00. The expert fees awarded total \$86,625.00.

Respondent argues that attorney and expert costs should be reduced because the ALJ did not find in favor of the State regarding Count V of the complaint, did not find Dr. Goldberg's testimony regarding Count V to be credible, and did not recommend a revocation of license. We find this argument to be without merit. As noted in the Final Order filed in this matter on May 25, 2016, this Board found Dr. Goldberg's testimony to be reliable and agreed with many of his opinions. Utilizing our own expertise, we found that Respondent engaged in multiple acts of gross and/or repeated negligence with regard to Respondent's care of five patients, including a finding of gross negligence with regard to the conduct alleged in Count V.

We take notice that investigative costs, approved many times in the past, are based on salaries, overhead and costs of state employees. Considering the important state interest to be vindicated, protection of the public by assuring physicians practice within the standard of care, the investigative costs sought of \$11,103.36 are certainly reasonable given the scope of this matter. However, only about 55.5 hours were supported by signed and detailed contemporaneous time records. Accordingly the investigative costs shall be reduced by \$6103.36, with a total assessment of \$5000.00. Court reporter and transcription fees are supported by payment vouchers and we find

them to be reasonable and necessary to support the prosecution of this matter.

We are thus satisfied that the following fees we are awarding are reasonable especially when viewed in the context of the seriousness of the action maintained against Respondent:

Attorney's Fees	\$244,600.00
Investigative Costs	\$5,000.00
Expert Costs	\$86,625.00
Court Reporter and Transcription	\$9,952.00
TOTAL	<hr/> \$346,177.00

We further find that Respondent has provided absolutely no documentation of any inability to pay such costs as required by notification provided to him well before the hearing date in this matter. Thus, we have determined to impose the costs as indicated above.

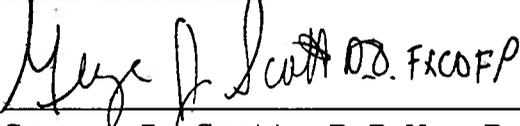
**IT IS THEREFORE ON THIS 25th DAY OF AUGUST, 2016
AS ORALLY ORDERED ON THE RECORD ON AUGUST 10, 2015:**

1. Respondent shall pay costs in the amount of \$346,177.00. Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of New Jersey 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. Notwithstanding any installment payment agreement, payment of costs in full shall be made prior to any application for reinstatement.

2. For any cost payments not paid in full within 30 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 to protect the judgment.

3. In addition to, but not in lieu of, filing of the Certificate of Debt, Respondent may request, and the Board will allow the costs to be paid in equal monthly installments through October 1, 2020. Each payment shall be due on the first business day of each month, commencing on October 1, 2016. Respondent may prepay at any time. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11. All payments shall be made by certified bank check, certified check or money order payable to the State of New Jersey and sent to the attention of Bill Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton New Jersey, 08608. Any other form of payment will be rejected and will be returned to the party making payment. In the event that a monthly payment is not received within five days of its due date, the entire balance of the costs shall become due and owing.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:  George J. Scott, D.P.M., D.O.
President

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board

meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.