

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

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

Chowdhury Azam, M.D.
LICENSE NO.: 25MA06382200

SUPPLEMENTAL ORDER
ASSESSING COSTS

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Consistent with the terms of the prior Consent Order in this matter suspending the license of respondent Chowdhury Azam, M.D., filed on February 3, 2017, which awarded costs, this matter was returned to the New Jersey State Board of Medical Examiners ("the Board") on February 8, 2017 solely to afford the Board an opportunity to review the Attorney General's cost application and respondent's objections thereto, and to thereafter set the amount of costs that respondent is assessed in this matter. Oral Argument was not requested and this matter was considered on the papers.

The State's cost application is supported by a certification prepared by Senior Deputy Attorney General Joan Gelber, dated January 6, 2017. As detailed within those certifications, the Attorney General seeks a total cost award of \$87,267.00, to include \$5,600.00

in expert fees, \$6,967.00 in investigative costs and \$74,700.00 in attorney fees. On January 20, 2017 respondent's counsel, Alexandra Garcia-Watts, Esq., submitted a letter outlining Dr. Azam's objections to the State's cost application and enclosing a certification by Respondent. A final letter in support of costs was submitted by SDAG Gelber on or about February 1, 2017.

We have reviewed the costs sought by the State and find the application sufficiently detailed as to the amounts sought, 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:

The Attorney General seeks investigative costs of \$6,967.00 and expert fees in the amount of \$5,600.00. Respondent has not specifically objected to the imposition of these costs. 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 \$6,967.00 are certainly reasonable given the scope of this matter. Similarly, given the voluminous patient records reviewed by the expert in this matter (15 patients), expert fees of \$5,600.00 are also reasonable.

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 SDAG Gelber who has been admitted to practice for more than twenty years. 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, 2015.¹ We find that the hourly rate of \$300 for an attorney with more than 20 years of experience appears to be reasonable and at, or below, the community standard.

Turning to the hours claimed, the total time expended by the Division of Law in this matter was 248.5 hours for a total of \$74,700.00. Respondent argues that attorney costs should be reduced where time is not adequately explained in the billing record, was spent on administrative tasks, or was spent on duplicative tasks, among other things. SDAG Gelber argues that all the time billed was reasonable and necessary due to the voluminous, often illegible, patient records, Respondent's inconsistent transcription of these records, discrepancies between the patient charts and the Prescription Monitoring Program, and the legal analysis and judgment

¹ 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."

necessary in drafting the Verified Complaint, Motion to Seal and compiling the various exhibits.

We find that the vast majority of entries on the submitted time sheets include adequate descriptive detail to support the hours billed and that the majority of billed hours were in fact reasonable. As discussed below we have determined to greatly reduce attorney fees based on Respondent's showing of financial hardship. We find that this reduction addresses any possible redundancy or lack of adequate description that might exist in the billing records submitted.

In support of his opposition to the imposition of costs, Respondent provided his own certification with supporting documentation. The information provided, including evidence of a bankruptcy in 2009, outstanding debt close to \$60,000.00, tax returns and the impending foreclosure of his home, all support a finding that Respondent is experiencing significant financial hardship. Accordingly, the total attorneys fees sought of \$74,700.00 shall be reduced by \$44,700.00 for a total award of \$30,000.00.

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	\$30,000.00
Investigative Costs	\$6,967.00
Expert Costs	\$5,600.00
TOTAL	<hr/> \$42,567.00

IT IS THEREFORE ORDERED ON THIS 17th DAY OF FEBRUARY, 2017
AS ORALLY ORDERED ON THE RECORD ON FEBRUARY 8, 2017:

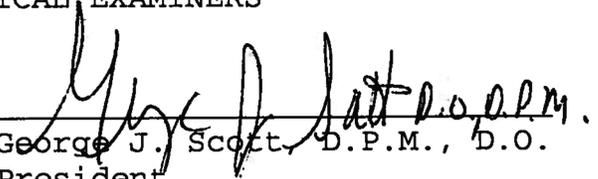
1. Respondent shall pay costs in the amount of \$42,567.00. A Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 to protect the judgment and interest shall accrue in accordance with Rule of Court 4:42-11.

2. During the period of Respondent's active suspension, he shall pay monthly installments of no less than \$100.00. Each payment shall be due on the first business day of each month, commencing on March 1, 2017. Respondent may prepay at any time. 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, or otherwise excused by the Board, the entire balance of the costs shall become due and owing.

3. Upon application for reinstatement Respondent shall repay all outstanding costs imposed by this Order and any costs or penalty imposed by any other Order entered by this Board. Alternatively, Respondent may present for Board approval a plan to repay the total

outstanding amount due and owing no later than three years from the date of reinstatement.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

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