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RESPONDENT'S APPENDIX

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TABLE OF CONTENTS

Bates No.

1. Order Granting Respondents' Motion for Attorney
Fees and Costs, filed November 15, 2017..... 001-005



ORD
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*Attorneys for Respondent Nevada State
Board of Medical Examiners*

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA

KOFI SARFO, M.D.,

Case No.: A-17-752616-W

Petitioner,

Dept. No.: XVII

vs.

**ORDER GRANTING RESPONDENTS'
MOTION FOR ATTORNEY FEES AND
COSTS**

NEVADA STATE BOARD OF MEDICAL
EXAMINERS,

Date of Hearing: June 28, 2017

Respondents.

Time of Hearing: Chambers

ORDER

On May 25, 2017, respondent NEVADA STATE BOARD OF MEDICAL EXAMINERS (the "Board") filed a Motion for Attorney Fees and Costs. Pursuant to EDCR 2.20(e) and NRCP 6, petitioner Kofi Sarfo, M.D.'s ("Dr. Sarfo") opposition was due on June 12, 2017. Dr. Sarfo filed an untimely opposition on June 16, 2017 and the Board filed its reply on June 19, 2017. After reviewing the motion and corresponding briefing and evidence on June 28, 2017, this Court hereby finds as follows:

1. Initially, Dr. Sarfo brought this matter requesting a Preliminary Injunction against the Board, to preclude the Board from certain conduct relating to an investigation of a complaint that was filed against Dr. Sarfo under NRS 630.307.

1 2. The Board initiated an investigation against Dr. Sarfo to determine the
2 validity of the complaint, as it is required to do under NRS 630.311(1).

3 3. Dr. Sarfo filed an emergency writ petition with this Court, along with a
4 Motion for a Preliminary Injunction. He sought to prevent the Board from enforcing a
5 subpoena issued by the Board's Investigative Committee requiring Dr. Sarfo to produce
6 various patient records.

7 4. This Court denied Dr. Sarfo's request for a Preliminary Injunction because
8 it found that Dr. Sarfo cannot prevail on the merits of his underlying writ action for the
9 following reasons:

10 (a) Due process protections need not be made available in
11 proceedings that merely involve fact-finding or investigatory exercise by the government
12 agency. Hernandez v. Bennett-Haron, 128 Nev. Adv. Op. 54, 287 P.3d 305 (2012).

13 (b) Pursuant to NRS 630.140(1), the Board is empowered to hold
14 hearings and conduct investigations pertaining to its duties imposed under law, which
15 includes issuing orders to aid in its investigations that compel a physician to appear
16 before the Investigative Committee. See NRS 630.311(1).

17 (c) The Board is prohibited from disclosing to Dr. Sarfo the identity of
18 the person who files the complaint, or the actual complaint disclosing the allegations
19 against Dr. Sarfo. See NRS 630.336(4).

20 5. The Board now seeks an award of attorney fees and costs under NRS
21 18.010, on the ground that Dr. Sarfo maintained the action without a reasonable basis in
22 law. Under NRS 18.010(2)(b), the district court may award attorney fees to a prevailing
23 party when it finds that a claim is frivolous or brought or maintained without reasonable
24 ground or to harass the prevailing party.

25 6. This Court finds that the Board was the prevailing party and that Dr. Sarfo
26 did not bring this current proceeding with a reasonable basis in law. The Board was
27 merely performing its required investigative duties pursuant to NRS 630.311(1).
28

1 7. Dr. Sarfo argues that Tate v. State, Bd. of Med. Exam'rs, 131 Nev. Adv.
2 Op. 67, 356 P.3d 506 (2015), is dispositive of this matter, and that, therefore, any award
3 of fees is improper. However, in Tate, the Nevada Supreme Court dealt with the issue
4 of the right to judicial review after a final decision by the Board. Tate is inapplicable to
5 the present matter, as the Board in this case had merely commenced its mandated
6 investigative duties pursuant to NRS 630.311.

7 8. The Board also seeks an award of attorney fees and costs against Dr.
8 Sarfo's counsel, Mr. Hafter, under NRS 7.085. However, because this Court
9 determines that an award of fees is appropriate against Dr. Sarfo under NRS
10 18.010(2)(b), an award of attorney fees against Mr. Hafter pursuant to NRS 7.085(1)(a)
11 is unwarranted.

12 THEREFORE, this Court **ORDERS** that the Board's Motion for Attorney Fees
13 and Costs is GRANTED IN PART AND DENIED IN PART as follows:

14 9. When awarding attorney's fees, the court may consider the following
15 factors: (a) the qualities of the advocate; (b) the character of the work to be done; (c) the
16 work actually performed by the advocate; and (d) the result. Brunzell v. Golden Gate
17 Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

18 10. After reviewing and considering the motions submitted to this Court, the
19 briefs, the evidence, the arguments of counsel at all hearings, and the Brunzell factors,
20 this Court finds that the majority of the Board's fees are reasonable and justified under
21 Brunzell, and hereby awards attorney fees based upon a review of the Board's
22 submitted invoices and pleadings on file.

23 11. First, Michael Sullivan, Esq., Barry Breslow, Esq., and Therese Shanks,
24 Esq. have all practice law for greater than five years time, are established attorneys who
25 possess extensive experience in business litigation, and provided a high quality of work
26 for the Board by obtaining a favorable outcome in this case.

27 12. Second, this case involved statutory interpretation accompanied by
28

substantial legal research and writing.

13. Third, the work performed by all three attorneys is within the industry standard for similar litigation firms and has been revised based on this Court's review of the billing statements.

14. Upon review of the billing records, this Court reduces the requested amount by approximately ~~\$11,706.00~~ ^{\$10,271.00}. Accordingly, the Board is entitled to recover attorney fees in the amount of ~~\$20,515.00~~ ^{\$21,950.00}, and costs in the amount of \$339.31.


This Court hereby **ORDERS** that the Board's Motion for Attorney Fees and Costs is GRANTED IN PART AND DENIED IN PART. The Board's request for attorney fees and costs against Dr. Sarfo is GRANTED, and judgment against Dr. Sarfo and in favor of the Board in the amount of \$399.31. Total attorneys fees to Defendant in the amount of ~~\$20,515.00~~ ^{\$21,950.00}, following the following reductions, totaling ~~\$11,706~~ ^{\$10,271.00} (Disallowed billing entries: M. Sullivan: 5/16/17, 5/19/17, ~~5/22/17, 5/24/17~~, 5/25/17, 5/30/17, 5/31/17, 6/1/17, 6/14/17, 6/16/17; B. Breslow: 3/22/17; T. Shanks: 5/12/17, 5/15/17, 5/16/17, 5/22/17, 5/24/17, 5/26/17, 5/30/17, 5/31/17, 6/15/17, 6/16/17). The aforementioned entries appear to be covered by entries from other attorney work which is included in the Court's Order awarding attorneys fees. The Board's request for attorney fees and costs against Jacob Hafter, Esq., is DENIED.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 3 day of Nov, 2017.


DISTRICT JUDGE *FG*

///

Submitted by:

Robison, Simons, Sharp & Brust
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Michael E. Sullivan

Michael E. Sullivan (SBN 5142)
Therese M. Shanks (SBN 12890)
*Attorneys for Nevada State Board of Medical
Examiners*

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of ROBISON,
3 SIMONS, SHARP & BRUST, and that on this date I caused to be served a
4 true copy of the attached **RESPONDENT'S APPENDIX** on all parties to
5 this action by the method(s) indicated below:
6

7
8 X by using the Court's CM/ECF Electronic Notification
9 System addressed to:

10 Jacob L. Hafter, Esq.
11

12
13 DATED this 22nd day of November, 2017.

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15 Shelly Milled
16 Employee of Robison, Simons, Sharp & Brust
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