

7-22-03

Final Order No. DOH-03-1337- FOI/MOA
FILED DATE - 11/12/03
Department of Health

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF NURSING

DEPARTMENT OF HEALTH,
BOARD OF NURSING
Petitioner,

At

vs.

DOAH Case No.: 03-1458PL
DOH: 2002-00822

03 NOV 12 AM 10:52
UNIVERSITY OF FLORIDA
ADMINISTRATIVE
HEARINGS

PEARLA MIXON, CNA
Respondent.

DMK-CWS

FINAL ORDER

THIS CAUSE came before the BOARD OF NURSING (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 10, 2003, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Petitioner's Motion to Assess Costs. (copies of which are attached hereto as Exhibits A and B respectively) in the above-styled cause. Petitioner was represented by an attorney within the Department of Health, Prosecution Services Unit. Respondent did not appear. Rosanna Catalano, Assistant Attorney General, advised the Board during this hearing.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

Findings of Fact

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

Conclusions of Law

3. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida

Statutes, and Chapter 489, Florida Statutes.

4. All Conclusions of Law as set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

Petitioner's Motion to Assess Costs

5. After consideration of the Petitioner's Motion to Assess Costs and attached affidavits, the Board assesses costs in this case to be \$2,206.18.

Upon a complete review of the record in this case, the Board determines that the recommendation by the Administrative Law Judge be **ACCEPTED**.

WHEREFORE, IT IS HEREBY **ORDERED AND ADJUDGED** that the Respondent's CNA certification be **REVOKED** and Respondent pay \$2,206.18 in **COSTS** to the Department of Health.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 31 day of October, 2003.

BOARD OF NURSING



Dan Coble, RN, PhD,
Executive Director *on behalf of*
ROSA RAMOS, RN, CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to: Pearla Mixon, 4365 Tuna Drive, Southeast, St. Petersburg, FL, 33705, by U.S. Mail to Daniel KilBride, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Rosanna Catalano, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050 this 12th day of November, 2003.

Heather Coleman

RC
10/28/03

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Heather Coleman*
DATE 9/18/03

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2002-00822

PEARLA M. MIXON, C.N.A.

Respondent.

_____ /

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CLERK
DEPARTMENT OF HEALTH

**MOTION TO ASSESS COSTS IN ACCORDANCE WITH
SECTION 456.072(4)**

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Nursing for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2003). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Nursing will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2003),¹ states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of \$2,206.18, based on the following itemized statement of costs:

- a. Total soft costs for Complaints \$22.87
- b. Total soft costs for Investigations \$814.18
- c. Total soft costs for Legal \$1,349.13

¹ Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$2,206.18, as evidenced in the attached affidavit. (Exhibit A).


4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of \$2,206.18 as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2003).

WHEREFORE, the Department of Health requests that the Board of Nursing enter a Final Order assessing costs against the Respondent in the amount of \$2,206.18.

DATED this 17th day of September, 2003.


Respectfully submitted,



Kim M. Kluck
Assistant General Counsel
Florida Bar Number 0040967
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 414-8126
(850) 414-1991 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided by U.S. Mail this 17th day of September, 2003, to: Pearla M. Mixon, C.N.A., 4365 Tuna Drive, Southeast, St. Petersburg, Florida 33705.



Kim M. Kluck, Attorney

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

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DIVISION OF
ADMINISTRATIVE
SERVICES

BEFORE ME, the undersigned authority, personally appeared **CHARLENE G. WILLOUGHBY**, who was sworn and states as follows:

- 1) My name is Charlene G. Willoughby.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Investigation Manager for the Consumer Services Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (i.e. medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than five years. My business address is 4052 Bald Cypress Way, Bin C-75, Tallahassee, Florida 32399-3275.
- 4) As Investigation Manager, my job duties include data base administration for the Time Tracking System. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number 2002-00822 Department of Health v. Pearla M. Mixon, C.N.A. are two thousand two hundred six dollars and eighteen cents (**\$2,206.18**).
- 6) The costs for DOH case number 2002-00822 (Department of Health v. Pearla M. Mixon, are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case number 2002-00822 Department of Health v. Pearla M. Mixon, C.N.A. are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees that work on cases daily are to keep track of their time in six-minute increments (i.e. investigators and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time

worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (i.e. Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

- 9) Charlene G. Willoughby, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Charlene G. Willoughby
Charlene G. Willoughby, Affiant

State of Florida
County of Leon

Sworn and subscribed before me this 17 day of September, 2003, by Charlene G. Willoughby, who is personally known to me.

Mary R. Wilson
Notary Signature



Mary R. Wilson
MY COMMISSION # CC914113 EXPIRES
June 7, 2004
BONDED THRU TROY FAIN INSURANCE, INC

Name of Notary Printed

Stamp Commissioned Name of Notary Public: