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DEPARTMENT OF HEALTH  
CLERK: Heather Coleman  
DATE: 4-28-04

STATE OF FLORIDA  
BOARD OF HEARING AID SPECIALISTS

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOAH Case No. 03-3452PL  
DOH Case No. 2001-19941

LJS-CWS

KENT A. BROY,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Hearing Aid Specialists (Board) at a duly-noticed public meeting on April 20, 2004, via telephone conference, for the purpose of assessing costs. On March 5, 2004, the Board conducted a hearing not involving disputed issues of material fact pursuant to section 120.569, and subsection 120.57(2), Florida Statutes, and reserved jurisdiction to hear the matter of the amount of costs to be assessed. Petitioner filed the attached Motion for Costs, pursuant to section 456.073, Florida Statutes. Respondent filed the attached Response to Petitioner's Assessment of Costs.

Steven Graham, Assistant Attorney General, represented Petitioner. Respondent was not present at the meeting; however, he was represented by Attorney E. Raymond Shope II.

After hearing from the Petitioner and following a complete review of the record in

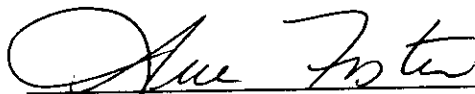
this matter, the Board voted to GRANT, in part, the Department's Motion for Costs.

IT IS HEREBY ORDERED AND ADJUDGED that Respondent shall pay costs in the amount of \$5,365.11. All costs shall be paid within 30 days of the date of this final order. Payment of the costs shall be made payable to the Department of Health and shall be mailed to the Division of Quality Assurance, Client Services Unit, P.O. Box 6320, Tallahassee, Florida 32314-63209.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 27 day of April 2004.

BOARD OF HEARING AID SPECIALISTS



Sue Foster, Board Executive Director

**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 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 furnished by U.S. mail to: Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; to E. Raymond Shope II, Esquire, 1404 Goodlette Road, North, Naples, Florida 34102; to Steven Graham, Assistant Attorney General, 110 S.E. 6<sup>th</sup> Street, 9<sup>th</sup> Floor, Fort Lauderdale 33301; and by interoffice mail to Cassandra Pasley, Senior Attorney, Department of Health, Office of the General Counsel, 4052 Bald Cypress Way, Bin A-02, Tallahassee, Florida 32399, this 28 day of April 2004.

Erica d. Pruitt

**Deputy Agency Clerk**

STATE OF FLORIDA  
BOARD OF HEARING AID SPECIALISTS

DEPARTMENT OF HEALTH  
CLERK: *Erice & Prince*  
DATE 3/22/04

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. AS 2001-19941

KENT A. BROY,

DOAH Case No. 03-3452PL

Respondent.

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

COMES NOW the Department of Health, by and through undersigned counsel, and moves the BOARD OF HEARING AID SPECIALISTS (hereinafter "the Board") 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 therefor, the Petitioner states the following:

1. At its regularly scheduled meeting on March 5, 2004, the Board took up the above-styled disciplinary action and decided to enter a Final Order imposing discipline against Respondent. The Board reserved jurisdiction to hear the matter of costs to be assessed against the Respondent pursuant to Section 456.072(4), Florida Statutes (2003).

2. Section 456.072(4), Florida Statutes (2003), 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 \$12,118.52, based on the following itemized statement of costs:

Department of Health costs per Exhibit A:	\$ 1,177.44
Department of Legal Affairs costs per Exhibit B:	\$10,941.08

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$12,118.52, as evidenced in the attached affidavits. (Exhibits A and B).

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 affidavits attached as Exhibits A and B and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of \$12,118.52 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 HEARING AID SPECIALISTS enter a Final Order assessing costs against the Respondent in the amount of \$12,118.52.

DATED this 11<sup>TH</sup> day of MARCH, 2004.

Respectfully submitted,



Steven Graham  
Assistant Attorney General  
Florida Bar Number 0689408  
Department of Legal Affairs  
110 SE 6th Street, 9th Floor  
Fort Lauderdale, FL 33301  
TEL. (954) 712-4600  
FAX (954) 712-4658

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 11<sup>TH</sup> day of MARCH, 2004, to: E. Raymond Shope, Esquire, 1404 Goodlette Road N, Naples, FL 34102 [Attorney for Respondent].



Steven Graham

EXHIBIT "A"AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA  
COUNTY OF LEON:

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

- 1) My name is Charlene 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 1580 Waldo Palmer Lane, Tallahassee, Florida 32308.
- 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) DOH's costs for investigating and prosecuting DOH case number **AS 2001-19941** (Department of Health v. Kent A. Broy) are one thousand, one hundred seventy-seven dollars and forty-four cents (**\$1,177.44**). This amount does not include the costs and expenses associated with the Office of the Attorney General's prosecution of this case.
- 6) The costs for DOH case number **AS 2001-19941** (Department of Health v. Kent A. Broy) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case number **AS 2001-19941** (Department of Health v. Kent A. Broy) 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 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 Willoughby  
Charlene Willoughby, Affiant

State of Florida  
County of Leon

Sworn and subscribed before me this 4 day of March, 2004, by Charlene 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:



## Complaint Cost Summary

Complaint Number:200119941

Complainant's Name: HERMAN % GEORGE K. I

Subject's Name: BROY KENT A I

	***** Cost to Date *****	
	Hours	Costs
<b>Complaint:</b>	1.60	\$65.70
<b>Investigation:</b>	21.50	\$949.23
<b>Legal:</b>	2.40	\$162.51
	*****	*****
<b>Sub Total:</b>	25.50	\$1,177.44
<b>Expenses to Date:</b>		\$0.00
<b>Prior Amount:</b>		\$0.00
<b>Total Costs to Date:</b>		\$1,177.44



# Time Tracking Report

## Itemized Cost by Complaint

Complaint 200119941

Report Date: 03/04/2004

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
<b>BUREAU OF CONSUMER COMPLAINTS</b>						
HA16	0.50	\$41.06	\$20.53	11/20/2001	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA16	0.30	\$41.06	\$12.32	01/10/2002	25	REVIEW CASE FILE
HA16	0.80	\$41.06	\$32.85	01/25/2002	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
Sub Total	1.60		\$65.70			
<b>BUREAU OF INVESTIGATIVE SERVICES</b>						
W188	1.00	\$40.68	\$40.68	02/04/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/05/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/07/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.50	\$40.68	\$61.02	02/11/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/12/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/15/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/18/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/19/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/21/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	02/25/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$40.68	\$40.68	03/01/2002	4	ROUTINE INVESTIGATIVE WORK
W188	2.00	\$40.68	\$81.36	03/04/2002	4	ROUTINE INVESTIGATIVE WORK
W188	1.00	\$47.19	\$47.19	10/24/2003	47	TRIAL PREPARATION
W132	0.50	\$54.70	\$27.35	11/03/2003	6	SUPPLEMENTAL INVESTIGATION
W132	1.50	\$54.70	\$82.05	11/03/2003	58	TRAVEL TIME
W132	1.00	\$54.70	\$54.70	11/04/2003	6	SUPPLEMENTAL INVESTIGATION
W188	1.00	\$47.19	\$47.19	11/05/2003	58	TRAVEL TIME
W188	3.00	\$47.19	\$141.57	11/05/2003	108	PARTICIPATION IN CRIMINAL TRIAL/PROCEEDING



# Time Tracking Report

## Itemized Cost by Complaint

Complaint 200119941

Report Date: 03/04/2004

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
<b>Sub Total</b>						
	21.50		\$949.23			
<b>BUREAU OF LEGAL SERVICES</b>						
HL63B	1.60	\$67.71	\$108.34	04/02/2002	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HL63B	0.30	\$67.71	\$20.31	04/02/2002	25	REVIEW CASE FILE
HL63B	0.50	\$67.71	\$33.86	04/02/2002	35	TELEPHONE CALLS
<b>Sub Total</b>						
	2.40		\$162.51			
<b>Total Cost</b>						
	25.50		\$1,177.44			

AFFIDAVIT OF COSTS

EXHIBIT "B"

State of Florida

County of Broward

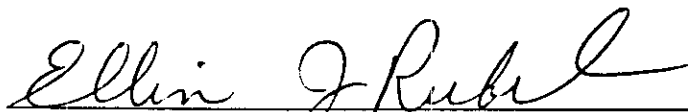
**BEFORE ME**, the undersigned authority, personally appeared **STEVEN GRAHAM**, who was sworn and states as follows:

1. My name is Steven Graham, and I am employed by the Office of the Attorney General.
2. I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of records at the Office of the Attorney General.
3. My address is Steven Graham, Administrative Law Section, Office of the Attorney General, 110 S.E. 6th Street, 9th Floor, Fort Lauderdale, FL 33301. My telephone number is (954) 712-4600.
4. I am the person who was assigned by the Office of the Attorney General to prosecute Department of Health case number AS 2001-19941 for the Department of Health against **KENT A. BROY**.
5. I spent 180.10 hours on activities related to prosecuting the case referenced in paragraph 4 of this affidavit. At the rate of \$60.75 per hour, this represents costs to the Department of Health in the amount of \$10,941.08.
6. By signing below, I affirm that the facts stated above are true and correct to the best of my knowledge and belief.



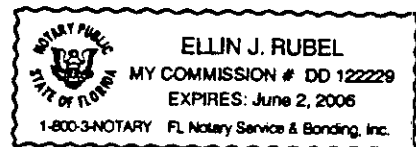
\_\_\_\_\_  
Signature of Affiant

Sworn to and subscribed before me this 10 day of March, 2004, by Steven Graham.



\_\_\_\_\_  
Signature and Seal of Notary Public

Check one:  
 Personally known OR  Produced identification



\_\_\_\_\_  
Type of Identification Produced

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK *Nathaniel Coleman*  
DATE 3/29/04

DEPARTMENT OF HEALTH, BOARD OF  
HEARING AID SPECIALISTS,

Petitioner,

VS.

CASE NO.: 03-3452PL

KENT BROY,

Respondent.

2004 MAR 25 P 1:19  
BOARD OFFICE

RESPONSE TO PETITIONER'S ASSESSMENT OF COSTS

COMES NOW the Respondent, by and through his undersigned attorney and files this objection to Petitioner's Assessment of Costs and would state as follows:

1. Petitioner's affidavit Exhibit "B", fails to contain a complete itemization of attorney's time in prosecuting the Administrative Complaint against the Respondent. As Respondent (without waiving his objections to the Board's inappropriate rejection of the Recommended Order of the Administrative law Judge) was the prevailing party in regards to three (3) of the five (5) counts of the Administrative Complaint, it is not proper to award Petitioner attorney's fees and costs for time involved in the prosecution of charges that were dismissed.

2. As Petitioner has failed to file a complete itemization of his time involved in the prosecution of the Administrative Complaint herein, Respondent is unable to raise specific objections to the Assessment of Costs filed herein. Therefore, as Respondent is obviously prejudiced by the lack of itemization of the Petitioner's time and without waiving any objections he might therefore have raised, he would move that Petitioner's request for


attorney's fees and costs be denied as improperly pled and filed.

3. Petitioner's affidavit Exhibit "A" and accompanying documents, fail to contain a complete itemization of Administrative and Investigative time in regards to the various counts alleged in the Administrative Complaint filed against the Respondent. As Respondent (notwithstanding his objections to the Board's inappropriate rejection of the Recommended Order of the Administrative law Judge) was the prevailing party in regards to three (3) of the five (5) counts of the Administrative Complaint, it is not proper to award Petitioner costs for time involved in the prosecution of charges that were dismissed. For example, Petitioner seeks to assess time spent by the Investigator for travel time and participation at the formal hearing. As the Petitioner did not prevail on any of the counts relating to the investigator's testimony, it is improper to assess same against Respondent.

WHEREFORE based upon the foregoing, Respondent requests the Board to deny the Petitioner's Assessment of Costs.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U.S. Mail to Steven Graham, Esquire at Office of the Attorney General, 110 Southeast 6<sup>th</sup> Street, 9<sup>th</sup> Floor, Fort Lauderdale, Florida 33301 this 23<sup>rd</sup> day of March, 2004.

  
\_\_\_\_\_  
E. RAYMOND SHOPE, ESQUIRE  
1404 GOODLETTE ROAD N  
NAPLES, FLORIDA 34102  
(239) 262-8281  
FLA BAR NO.: 0559636