

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA STATE ORIENTAL MEDICAL
ASSOCIATION,

Petitioner,

vs.

Case No. 18-2508RP

DEPARTMENT OF HEALTH, BOARD OF
PHYSICAL THERAPY PRACTICE,

Respondent,

and

FLORIDA PHYSICAL THERAPY
ASSOCIATION, INC.,

Intervenor.

_____ /

FINAL ORDER ON ATTORNEYS' FEES AND COSTS

On January 28, 2019, a Final Order was entered in this case holding that proposed Florida Administrative Code Rule 64B17-6.008 was an invalid exercise of delegated legislative authority. This Final Order on Attorneys' Fees and Costs is entered for the purpose of resolving the issue of attorneys' fees and costs sought by Petitioner pursuant to section 120.595(2), Florida Statutes.

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to attorneys' fees and costs pursuant to section 120.595(2).

PRELIMINARY STATEMENT

On January 28, 2019, a Final Order was entered in this case holding that proposed rule 64B17-6.008 was an invalid exercise of delegated legislative authority. On February 1, 2019, Petitioner, Florida State Oriental Medical Association ("FSOMA"), filed its "Motion for an Order to be Rendered Pursuant to Section 120.595(2), Florida Statutes, Against the Agency for Attorney's Fees and Costs" (the "Motion"). The Motion was accompanied by the affidavit of FSOMA's counsel and billing records documenting the attorneys' fees and costs incurred by FSOMA in pursuing this case. FSOMA also submitted the expert affidavit of attorney Michael Glazer opining as to the reasonableness of the attorneys' fees and costs sought by FSOMA. The Motion concluded that FSOMA had incurred attorneys' fees well in excess of the statutory maximum of \$50,000.00 and costs in the amount of \$25,973.43.

Respondent, Department of Health, Board of Physical Therapy Practice (the "Board"), initially requested an extension of the time to respond to the Motion in order to give the Board an opportunity to meet regarding its options as to the Final Order. By Order dated February 12, 2019, the Board was given until February 28, 2019, to submit its written response to the Motion.

On February 21, 2019, the Board filed its Response to Petitioner's Motion for Attorneys' Fees and Costs (the

"Response"). The Response states that the Board met on February 14, 2019, and reviewed the Final Order and Petitioner's Motion and accompanying documentation. Upon review and being fully informed of the circumstances, the Board voted unanimously to approve the award of the attorneys' fees and costs as requested by FSOMA in the Motion.

FINDINGS OF FACT

1. A Final Order was entered on January 28, 2019, finding that the Board's proposed rule 64B17-6.008 was an invalid exercise of delegated legislative authority.

2. FSOMA timely filed the Motion pursuant to section 120.595(2). The Motion states that FSOMA has incurred attorneys' fees in excess of the statutory limit of \$50,000.00 and costs in the amount of \$25,973.43.

3. Prior to any hearing on the Motion, the Board filed the Response, stating that it has voted unanimously to approve the award of the attorneys' fees and costs as requested by FSOMA in the Motion.

4. Based on the Motion and its supporting documentation, it is found that the amount of the award sought is reasonable.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over this proceeding pursuant to sections 120.569, 120.57(1), and 120.595(2), Florida Statutes.

6. Section 120.595(2) provides, in pertinent part:

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).— If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency No award of attorney's fees as provided by this subsection shall exceed \$50,000.

7. FSOMA meets the requirements specified in section 120.595(2) for an award of attorneys' fees and costs. The Board has acquiesced to the amount of attorneys' fees and costs requested by FSOMA in its Motion.

8. The amount of the requested award is reasonable.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Department of Health, Board of Physical Therapy Practice, shall pay to Petitioner, Florida State Oriental Medical Association, \$50,000.00 in attorneys' fees and \$25,973.43 in costs pursuant to section 120.595(2), Florida Statutes.

DONE AND ORDERED this 25th day of February, 2019, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 2019.

COPIES FURNISHED:

Craig D. Miller, Esquire
Rutledge Ecenia, P.A.
Suite 202
119 South Monroe Street
Tallahassee, Florida 32301
(eServed)

Lynette Norr, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050
(eServed)

Marlene Katherine Stern, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399
(eServed)

Cynthia A. Mikos, Esquire
Johnson Pope Bokor Ruppel & Burns LLP
Suite 3100
401 East Jackson Street
Tampa, Florida 33602
(eServed)

David Mark Maloney, Esquire
Rutledge Ecenia P.A.
Suite 202
119 South Monroe Street
Tallahassee, Florida 32301
(eServed)

Jamie A. Klapholz, Esquire
Johnson, Pope, Bokor, Ruppel & Burns, LLP
401 East Jackson Street
Tampa, Florida 33602
(eServed)

Stuart Wilcox, Esquire
Stuart Wilcox, LLC
2590 Walnut Street
Denver, Colorado 80205

Louise Wilhite-St. Laurent, Interim General Counsel
Department of Health
4052 Bald Cypress Way, Bin C65
Tallahassee, Florida 32399
(eServed)

Allen Hall, Executive Director
Board of Physical Therapy
Department of Health
4052 Bald Cypress Way, Bin C05
Tallahassee, Florida 32399-3255
(eServed)

State Surgeon General
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701
(eServed)

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 the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.