

481—435.38(105,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the board.

435.38(1) The board may assess the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed \$75.

b. All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable under the circumstances.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs include, but are not limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses are guided by Iowa Code section 622.69. The cost for expert witnesses is guided by Iowa Code section 622.72. Mileage costs are not guided by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

d. All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the service of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

435.38(2) When imposed at the board's discretion, hearing fees (not exceeding \$75) will be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule will be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board will have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditures. In order for the board to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

435.38(3) Any party may object to the fees, costs, or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object is deemed a failure to exhaust administrative remedies. Orders imposing fees, costs, or expenses will notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

435.38(4) Fees, costs, and expenses assessed by the board pursuant to this rule are allocated to the expenditure category in which the disciplinary procedure or hearing was incurred. The fees, costs, and expenses are considered repayment of receipts as defined in Iowa Code section 8.2.

435.38(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board constitutes a violation of an order of the board, is grounds for discipline, and is considered prima facie evidence of a violation of Iowa Code section 272C.3(2) "a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

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