

653—25.33(272C) Disciplinary hearings—fees and costs.

25.33(1) Definitions. As used in this rule in relation to a formal disciplinary action filed by the board against a licensee:

“*Deposition*” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Evaluation fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, other impairment-related examination or evaluation or clinical competency evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

25.33(2) Disciplinary hearing fee. The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

An order assessing a fee shall be included as part of the board’s final decision. The order shall direct the licensee to deliver payment directly to the board as provided in subrule 25.33(6).

25.33(3) Recovery of related hearing costs. The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may recover the costs for the court reporter and assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) 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 agency appeal process.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) 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 witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines in effect on January 1, 2005.

c. Deposition costs. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition cost includes a reasonable fee for an expert witness. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

d. Medical examination fees. All costs of physical or mental examinations or substance abuse evaluations or drug screening or clinical competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

25.33(4) Certification of reimbursable costs. The executive director or designee shall certify any reimbursable costs incurred by the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on the party responsible for payment of the certified costs at the time of the filing.

25.33(5) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a licensee shall include the amount of any disciplinary hearing fee assessed, which shall not exceed \$75. If the board also assesses reimbursable costs against the licensee, the board shall file a Certification of Reimbursable Costs which includes a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. Prior to seeking judicial review, a party shall file an objection to any fees or costs imposed by the board in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

25.33(6) Payment of fees and costs. All fees and costs assessed pursuant to this rule shall be made in the form of a check or money order made payable to Iowa Board of Medicine and delivered by the licensee to the board office.

25.33(7) Failure to make payment. Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

25.33(8) Repayment receipts. Fees and costs collected by the board pursuant to this rule shall be considered repayment receipts as defined in Iowa Code section 8.2.