













1 and open dismissal of Dr. Capurro’s documented and established disability, public perusal of  
2 accommodation communications and Dr. Capurro’s transcripts from dental school, and  
3 deliberate shaming of Dr. Capurro with reference to her grades and disability on the public  
4 record. The Board Prosecutors consistently and improperly relied upon witness Ron Blaze, an  
5 individual with no first hand knowledge, to serve as an expert witness during the hearing until  
6 DAG Bordelove and DAG Ward made clear that such testimony was improper. All of these  
7 missteps and machinations by the Board Prosecutors led to the “contentious” hearing the  
8 prosecutors now cite as justifying an unprecedented award of attorney’s fees and costs.<sup>3</sup>  
9

### 10 III.LEGAL STANDARD

11 NRS 622.400 allows the Board to recover “reasonable attorney’s fees and costs that are  
12 incurred by the regulatory body as part of its investigative, administrative and disciplinary  
13 proceedings against” Dr. Capurro.<sup>4</sup> To determine reasonableness of the fees requested, the  
14 Board should consider the factors laid out by the Nevada Supreme Court in *Brunzell v. Golden*  
15 *Gate Nat’l Bank*, 85 Nev. 345, 349-50 (1969) (“the *Brunzell* factors”):  
16

- 17 1. The qualities of the advocate: her ability, training, education, experience, professional  
18 standing and skill;
- 19 2. The character of the work to be done: its difficulty, its intricacy, its importance, time  
20 and skill required, the responsibility imposed and the prominence and character of the  
21 parties where they affect the importance of the litigation;
- 22

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23 <sup>3</sup> On a record where the Board Prosecutors reveled in discussing the most private  
24 and painful parts of Dr. Capurro’s education, career, and her health, the Prosecutors’ claims of  
25 “abuse” should be understood for what they are – a desperate attempt to justify an exorbitant and  
unreasonable request for fees and costs.

26 <sup>4</sup> The Board Prosecutors base their Motion on NRS 622.410, NRCP 55(b)(2), NRS  
27 18.020, NRS 18.010, and 18.005 – none of which apply to the Board or authorize it to award  
28 itself attorneys fees and instead relate Court proceedings. *See* Motion for Attorney’s Fees at p. 1,  
Memorandum of Fees and Costs at p. 1.

3. the work actually performed by the lawyer: the skill, time and attention given to the work; and
4. the result: whether the attorney was successful and what benefits were derived.

#### IV. ARGUMENT

##### A. THE REQUESTED ATTORNEY'S FEES ARE NOT REASONABLE UNDER THE *BRUNZELL* FACTORS

###### 1. *The Qualities of the Advocate.*

Considering the facts, law and discussion above, the Board should find the Board Prosecutor brought no particular ability, training, education, experience, or skill to these regulatory proceedings. The Board Prosecutor herself cites only to her extensive experience in the specialized and wholly different area of bankruptcy law to justify the expense of outside counsel in this case. *See* Brown Declaration. However, there is nothing in the record to show why the Board's General Counsel – Phil Su, who does have specialized experience with the Board's own governing statutes and procedures – could not have solely prosecuted the case given the fact that he attended and served as “co-prosecutor” throughout the entire investigation and hearing. There is nothing in the record that supports an award of fees at the rates Ms. Brown billed when Mr. Su was available to serve as prosecutor. To the extent the Board felt that Mr. Su wore too many hats (which he did) to serve as the prosecutor, the Board could have relied on the AG's office and request that a DAG, well versed in regulatory proceedings, to serve as prosecutor, consistent with other Boards' practices.

Indeed, the Board's reliance on Ms. Brown in this case is directly at odds with the 2016 and 2019 audits of the Board which specifically noted and rebuked reliance on outside counsel for disciplinary proceedings. The 2016 Audit specifically noted that use of outside counsel unnecessarily and unfairly increased costs to respondents. Both audits took issue with the costs



1 and fees assessed by the Board against respondents as overly inflated. The cases cited in those  
2 audits pale in comparison to the Board Prosecutors' Motion in this case. Both audits, as well as  
3 the Board's budgets, make clear that the fees and costs sought in this case are more than the total  
4 fees and costs awarded for the entire year in 2014, 2015.

5 *2. The character of the work to be done: its difficulty, its intricacy, its importance, time and*  
6 *skill required, the responsibility imposed and the prominence and character of the parties*  
7 *where they affect the importance of the litigation;*  
8

9 This case was not complex. It was immense only in that it went back in time to events  
10 from 2007 all the way through 2020. The case largely a historical, document heavy case  
11 perfectly fitted for stipulations of facts and exhibits – something the prosecutors never bothered  
12 to offer.

13 *3. the work actually performed by the lawyer: the skill, time and attention given to the work;*  
14 *and*

15 As discussed above, there was no particular skill, time or attention required for a  
16 historical case in which the documents provided the bulk of the evidence that the Board  
17 Prosecutors relied upon to “prove” their case. The Prosecutors fail to articulate any particular  
18 skill that warranted the overly aggressive stance taken throughout the investigation and  
19 proceedings.  
20

21 *4. the result: whether the attorney was successful and what benefits were derived.*

22 It cannot be stressed enough that the outcome achieved is a far cry from the one sought  
23 by the Board Prosecutors in this case. It is clear from the record that Dr. Capurro was open to  
24 discussing settlement and resolving this case. Had voluntary surrender of her license and public  
25 reprimand been the sanctions proposed by the Board Prosecutors, this matter would have been  
26 resolved in April 2021. Instead, the Board Prosecutors sought a ten-year ban from reapplication  
27  
28

1 – a penalty that prior Board Executive Director Shaffer-Kugel had seen only in one case ever,  
2 which involved significant patient harm. For the prosecution to claim total victory on this record  
3 is misplaced at best, but in no way supports an award of attorney’s fees and costs over \$270,000.

4 Finally, the Board Prosecutors’ Request for Amendment to Litigation Budget is improper  
5 and the Board should decline to grant it. It is ironic given the findings in this case, that the Board  
6 Prosecutors acted without prior Board authorization or Board of Examiners approval to accrue  
7 fees and costs in excessive of \$150,000 between May and November 2021 in this case. The  
8 actions by the Board Prosecutors are in violation of the State Agency Manual, Section 0325 and  
9 Section 0324 which require prior authorization by the Board and oversight of fees and expenses  
10 accrued. It is just another reason the Board should decline to award attorney’s fees in this case in  
11 excess of \$25,000.  
12

13 **V. CONCLUSION**

14 The Board Prosecutors ask this Board to depart from the law, from the Board’s prior  
15 practices and procedures, and from reasonableness by requesting fees and costs in the amount of  
16 \$276,659.65. The Board should, instead, award actually reasonable fees and costs in an amount  
17 no more than \$25,000.00.  
18

19 Dated: November 10, 2021

20 SKLAR WILLIAMS PLLC

21 */s/ Nadia Ahmed*

22 Nevada Bar No. 15489

23 410 South Rampart Blvd, Suite 350

24 Las Vegas, NV 89145

25 *Attorneys for Respondent*  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Sklar Williams PLLC, and that on the 26th  
3 day of October, 2021, I caused to be served a true and correct copy of the foregoing **DR.**  
4 **CAPURRO’S RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEYS’ FEES**  
5 **AND COSTS; AND REQUEST FOR AMENDMENT TO LITIGATION BUDGET AND**  
6 **TO VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** to the following  
7 persons, at the e-mail addresses set forth below:

8 **VIA ELECTRONIC MAIL:**

9 On Behalf of the Complainant Nevada State Board of Dental Examiners  
10 Ogonna M. Brown ([OBrown@lrrc.com](mailto:OBrown@lrrc.com))  
11 Phil Su ([pwsu@nsbde.nv.gov](mailto:pwsu@nsbde.nv.gov))

12 On Behalf of Members of NSBDE  
13 [RBordelove@ag.nv.gov](mailto:RBordelove@ag.nv.gov)  
14 [JDworin@nsbde.nv.gov](mailto:JDworin@nsbde.nv.gov)

15 SKLAR WILLIAMS PLLC

16 /s/ Nadia Ahmed

17 Nadia Ahmed

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9 *Attorneys for Respondent*  
10 *Antonina Capurro, DMD*

11 **BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS**

12 NEVADA STATE BOARD OF DENTAL  
13 EXAMINERS,

CASE NO.: LL-384-14-1978

14 *Complainant,*

**DECLARATION OF NADIA AHMED IN  
SUPPORT OF OPPOSITION TO  
MOTION FOR ATTORNEY'S FEES**

15 vs.

16 ANTONINA CAPURRO, DMD,

17 *Respondent.*

18  
19 I, Nadia Ahmed, declare as follows:

20  
21 1. I have personal knowledge of the information contained in this declaration. I swear  
22 they are true to the best of my knowledge and information.

23 2. I am counsel of record on behalf of Dr. Capurro in this matter and am familiar with  
24 the proceedings in this case, as well as the separate state court proceedings captioned *Antonina*  
25 *Capurro, DMD v. Nevada State Board of Dental Examiners*, Case No. A-20-825438-J.

26 3. In February, 2021, the Board General Counsel Phil Su and outside counsel Ogonna  
27 Brown, under the Executive Director's direction, initiated investigation of Dr. Capurro. The  
28

1 investigation is the most aggressive and unusual investigation by this Board to date. The Board  
2 Prosecutors noticed and took multiple depositions, improperly issued subpoenas for witnesses to  
3 testify and documents, and then after these subpoenas were quashed by a state court judge, then  
4 came to the Board to obtain subpoenas from them, as required.

5  
6 4. The Board Prosecutor's only proposal to resolve the matter without hearing was for  
7 Dr. Capurro to essentially receive the maximum penalty she would be given if she proceeded to  
8 hearing – voluntary surrender of her license, a ten year ban from reapplying, disciplinary sanctions  
9 and report to NPDB. Given the unreasonableness of this proposal, Dr. Capurro was left with little  
10 choice but to proceed to hearing.

11  
12 5. Prior to commencement of the Board hearing on May 21, 2021, the Board  
13 Prosecutors never offered any stipulations of fact to Dr. Capurro's counsel. The Board Prosecutors  
14 did not provide a reasonable exhibit list, but rather listed nearly every document it received in its  
15 investigation – spanning nearly two thousand pages in total – with no identification of the actual  
16 pages or facts it intended to establish. In contrast, Dr. Capurro's counsel took numerous steps to  
17 minimize the time and expense of the hearing, to include: submitting deposition transcripts in lieu  
18 of calling the witnesses, proposing fact stipulations to which Board Prosecutors declined to agree,  
19 and identifying specific excerpts of records and discrete pages as exhibits to be used in the hearing.

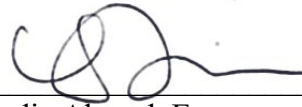
20  
21 6. The fees and costs sought by the Board far exceed the entire fees and costs awarded  
22 by the Board in prior years, contravene the findings of the 2016 and 2019 Board audits, and violate  
23 the State Agency Manual mandates requiring prior approval for increase in costs and outside  
24 counsel expenses, among other issues.

25  
26 7. An appropriate fee calculation should consider the costs of a single Board attorney,  
27 single prosecutor, investigator costs capped at \$200, and a total cap of \$25,000 in recognition of  
28 the unreasonable steps taken by Board prosecutors prolonging and complicating an otherwise

1 historical case easily presented via documents and fact stipulations.

2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
3 is true and correct.

4 Executed this 10th day of November 2021.

5 

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7 Nadia Ahmed, Esq.

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