

1 Ogonna M. Brown, Esq. (NBN 7589)
2 Adrienne Brantley-Lomeli, Esq. (NBN 14486)
3 LEWIS ROCA ROTHGERBER CHRISTIE LLP
4 3993 Howard Hughes Pkwy., Suite 600
5 Las Vegas, Nevada 89169
6 Tel.: (702) 474-2622
7 Email: OBrown@lewisroca.com
8 *Attorney for the Nevada State Board of Dental Examiners, Complainant*

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

10 NEVADA STATE BOARD OF DENTAL
11 EXAMINERS,

Case No: LL-384-14-1978

12 Complainant,
13 vs.

**REPLY IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS; AND
REQUEST FOR AMENDMENT TO
LITIGATION BUDGET**

14 ANTONINA CAPURRO, DMD,

15 Respondent.

16 Pursuant to NRS 622.410, and to the extent applicable, NRCP 55(b)(2), NRS 18.020,
17 and NRS 18.005, 18.010, and 18.020, the Nevada State Board of Dental Examiners
18 (“NSBDE”) by and through its counsel, Ogonna M. Brown, Esq., of the law firm of Lewis
19 Roca Rothgerber Christie, LLP (“Lewis Roca”), hereby submits its Reply to Lewis Roca’s
20 Motion Attorneys’ Fees and Costs (“Reply”) in response to Respondent Antonina Capurro,
21 DMD’s (“Respondent” or alternatively, “Capurro”) Opposition to the Motion for Fees and
22 Costs, and, for the reasons set forth herein, requests that the Board grant the Motion for Fees
23 and approve an amendment to the special counsel litigation budget that it approved on May
24 18, 2021 and overrule the objections raised by Respondent in the Opposition.

25 The Motion for Attorneys’ Fees and Costs and Request for Amendment to Litigation
26 Budget (“Motion”) is supported by the Declaration of Ogonna M. Brown, Esq. (“Suppl.
27 Brown Decl.”), special counsel for NSBDE, a true and correct copy of which is attached to
28 Lewis Roca’s Motion for Attorneys’ Fees and Costs as **Exhibit “1”**. This Motion is further
supported by the accompanying Memorandum of Points and Authorities, all pleadings and
filings of records, the exhibits attached hereto, and any oral argument the Court may allow on
the hearing of this Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Despite Dr. Capurro’s dilatory tactics throughout these proceedings, she now contends
3 the attorney’s fees the Board requested are unreasonable. Throughout the hearing Dr. Capurro
4 filed numerous untimely motions, necessitating emergency, all hands on deck responses. She
5 now contends that very process she requested was “unreasonably prolonged” and
6 complicated. Dr. Capurro, unhappy with the results of the lengthy and detailed process she
7 requested in both state court and before this board, attempts to slash the Board’s legitimately
8 earned and reasonable attorney’s fees. Indeed, the Board’s counsel engaged nearly 1,000
9 hours of work. And yet Dr. Capurro contends that counsel is entitled to \$25,000 or \$25 an
10 hour. This ridiculous calculation along with Dr. Capurro’s arguments must be rejected.
11 Rather, the Board should award \$276,659.65 attorney’s fees, especially in light of the fact that
12 Lewis Roca has not sought the full \$331,119.00 in its fee cap increase request, reflecting a
13 reduction of \$100,000. Rather, Lewis Roca requests approval for a budget increase of the Fee
14 Cap for an additional \$157,194.00, which will result in a total cap of \$231,119.00, to the
15 extent the Motion for Fees and Costs is approved by the Board. Lewis Roca is not seeking the
16 State Court attorneys’ fees and costs totaling approximately \$57,000 from this Board, which
17 amount will be sought by way of separate motion in the State Court.

18 **I. STATEMENT OF FACTS**

19 Dr. Capurro first inquired into the scope of her limited license (“Limited License”), issued
20 under NRS 631.271, in October 2020. *See* Amended Complaint dated April 15, 2021
21 (“Compl.”) ¶ 5 (filed as amended in Apr. 2021). In the same month, she learned from Board
22 Executive Director, Frank DiMaggio (“Director”), and Board Counsel, Phil Su (“Counsel”),
23 that she likely did not qualify to hold the Limited License any longer. *Compl.* ¶¶ 6-7. As a
24 result and upon his good-faith belief that Dr. Capurro no longer held the qualifications
25 necessary under NRS 631.271, Director administratively expired Dr. Capurro’s license in
26 November 2020. *Compl.* ¶ 10.

27 Dr. Capurro immediately sued the Board in state court. *Compl.* ¶¶ 11-12. In December
28 2020, she obtained preliminary injunctive relief from the State Court, which required that her

1 Limited License be reinstated to “active” status and that she be afforded due process with a
2 hearing. Compl. ¶ 13. Specifically, the State Court reserved the Board’s ability to consider
3 revocation through a formal hearing. *See* Capurro v. Nevada State Board of Dental
4 Examiners, Eighth Judicial District Court, Clark County, Nevada, Case No. A-20-825438-J,
5 Prelim. Inj. Order (issued Dec. 21, 2020) (finding that “[a]lthough Nevada law has procedural
6 safeguard in place for license revocation by the Board in disciplinary matters (see NRS
7 631.350 et seq.), the Board failed to utilize any parallel safeguards when the Executive
8 Director unilaterally, and without proper notice, issued a non-disciplinary ‘expiration’ of the
9 License” and that “if the Board decides to take further action to revoke, suspend, annul, or
10 withdraw Dr. Capurro for the same reason the Board ‘expired’ her license, the Board must
11 provide Dr. Capurro with her due process rights.”).

12 Dr. Capurro demanded a hearing, and yet from the onset of these proceedings Dr.
13 Capurro filed numerous untimely motions, alleging various Due Process violations, before
14 this Board had even issued a ruling. Dr. Capurro submitted several motions as follows:

- 15 a. Motion to Dismiss or in the Alternative to Continue Formal Hearing Scheduled
16 for June 22, 2021 (June 21, 2021);
- 17 b. Motion to Dismiss Count I for Mootness (July 2, 2021);
- 18 c. Motion to Dismiss for Violations of Nevada Law, Regulations, and Board
19 Policies (July 2, 2021); Motion to Dismiss for Fifth Amendment Violation
20 (July 2, 2021);
- 21 d. Motion to Compel Production of Documents (July 8, 2021); Motion to Exclude
22 Evidence Not Produced Prior to Commencement of Hearing (July 8, 2021);
- 23 e. Motion for Leave to File (1) Motion to Dismiss for Violations of Nevada Law,
24 Regulations, and Board Policies; (2) Motion to Dismiss Count I for Mootness;
25 (3) Motion to Dismiss for Fifth Amendment Violations; (4) Motion to Exclude
26 Evidence Not Produced Prior to Commencement of Hearing; and (5) Motion to
27 Compel Production of Documents (July 15, 2021); Motion to Dismiss First
28

1 Amended Complaint for Prosecution’s Failure to Meet Burden of Proof
2 (August 16, 2021); and

3 f. Motion to Dismiss or in the Alternative to Continue Formal Hearing Scheduled
4 for October 29, 2021 (October 26, 2021). *See* Brown Decl. ¶25.

5
6 Counsel for NSBDE did not file any motions before the Board during the proceedings,
7 but was forced to respond to each of Dr. Capurro’s motions, noting that the October 26, 2021
8 Motion to Dismiss/Continue was withdrawn before NSBDE was able to formally file the
9 Opposition thereto. *See* Brown Decl. ¶ 26.

10
11 **II. LEGAL ARGUMENT**

12 “In Nevada, the method upon which a reasonable fee is determined is subject to the
13 discretion of the court, which is tempered only by reason and fairness.” *Shuette v. Beazer*
14 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548–49 (2005) (internal quotation
15 marks and citation omitted). Courts often begin with the “lodestar” amount, which “involves
16 multiplying the number of hours reasonably spent on the case by a reasonable hourly rate.”
17 *Id.*, 121 Nev. at 864-65, 124 P.3d at 549 & n.98 (internal quotation marks and citation
18 omitted). The “court must continue its analysis by considering the requested amount in light
19 of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank.*” *Id.*, 121
20 Nev. at 865, 124 P.3d at 549. Those factors are: (1) the qualities of the advocate: his ability,
21 his training, education, experience, professional standing and skill; (2) the character of the
22 work to be done: its difficulty, its intricacy, its importance, time and skill required, the
23 responsibility imposed and the prominence and character of the parties where they affect the
24 importance of the litigation; (3) the work actually performed by the lawyer: the skill, time
25 and attention given to the work; (4) the result: whether the attorney was successful and what
26
27
28

1 benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33
2 (1969).

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

4 Counsel for the Board diligently prosecuted this matter resulting in an outcome in the
5 Board's favor. And yet Dr. Capurro attempts to argue that Board counsel brought no
6 particular ability or skill to these proceedings. This nonsensical argument must be rejected.
7
8 Ogonna M. Brown, Esq. was the primary attorney on this case. Ogonna Brown is a partner in
9 Lewis Roca's Litigation practice with years of high-stakes experience. Ms. Brown is a skilled
10 litigator with significant experience not only in civil litigation, but also with the
11 administrative and regulatory matters that are being presented before this board. As a current
12 member of the Nevada Gaming Commission, Ms. Brown is also very well-versed with the
13 proper handling and adjudication of regulatory, administrative and licensing disputes. She
14 has nearly 20 years of experience practicing law in Las Vegas (Brown Decl. ¶ 27) and is well
15 respected within the legal community.
16

17 Likewise, Mr. Su, Mr. Dworin, Ms. Bordelove and Mr. Ward all have significant
18 experience as public sector attorneys. Each of them are well-versed in open meeting law and
19 the various statutory and regulatory issues that were before the Board in this action and were
20 well-qualified to render the services to the Board as required in these proceedings.
21

22 Further, Dr. Capurro argues that there is nothing in the record to show why the
23 Board's General Counsel – Phil Su, could not have solely prosecuted the case given the fact
24 that he attended and served as “co-prosecutor.” However, as this Board is well aware, Dr.
25 Capurro filed a state court lawsuit against the Board alleging that her due process rights were
26 violated. As such the Board retained outside special litigation counsel to assist with the state
27 court lawsuit and administrative proceedings, which proved to be extensive and voluminous
28

1 as a result of the extensive motion practice Dr. Capurro elected to bring during the
2 proceedings before the Board, causing substantial delay and resulting in prolonged
3 proceedings, which ultimately increased the prosecution's cost of bringing the matter before
4 the Board. Even though Dr. Capurro attacks the skill of special litigation counsel, the
5 prosecution successfully proved the case on all three counts alleged in the Amended
6 Complaint. Setting aside the ad hominem attacks hurled by Dr. Capurro, this Board was able
7 to observe the quality of the prosecutor's advocacy first hand.
8

9 **2. *The Character of the Work Done***

10 In considering the nature of the litigation, courts look at "the character of the work to
11 be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility
12 imposed and the prominence and character of the parties where they affect the importance of
13 the litigation." *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. Dr. Capurro alleges the work done
14 in this matter was not complex. She ignores the numerous due process considerations Board
15 counsel litigated as well as the complex statutory scheme Board counsel navigated. In this
16 unprecedented case, counsel for NSBDE had to research jurisdictional and statute of
17 limitations issues and study a variety of documents pertaining to the unique circumstances of
18 Dr. Capurro's licensure and the qualifications for a limited license under NRS 631.271. In
19 addition, Board counsel was forced to respond to the numerous untimely motions Dr. Capurro
20 filed and engaged in intensive discovery. In light of the nature of this case, which involved
21 numerous dispositive motions brought orally and in writing by Dr. Capurro through her
22 counsel, extensive depositions, and lengthy hearings prolonged as a result of Dr. Capurro's
23 counsel's dilatory conduct and delay tactics peppered throughout the proceedings, the amount
24 Board counsel seeks is reasonable.
25
26

27 ///
28

1 3. ***The Work Actually Performed***

2 The work actually performed in this matter was reasonable. There are no issues of
3 block billing, excessive time spent or redundant or unnecessary tasks performed. Indeed, in an
4 effort to reduce fees Board counsel delegated drafting tasks to associates and paralegals. The
5 time spent represents the significant document review, research, and drafting necessary to
6 handle the unique aspects of this case, including but not limited to, six (6) months of hearings
7 that included the testimony of eleven (11) witnesses and six (6) motions.
8

9 In addition, the Board’s General Counsel, Phil Su, Esq., reviewed and supervised
10 retained counsel and all efforts in investigating and prosecuting this matter. Including only
11 services rendered in the process of seeking the authorized investigation; requesting
12 subpoenas; meeting with the review panel; attending his own deposition; and attending the
13 formal hearing. Further, it is reasonable for Phil Su to be see compensation from Respondent
14 for testifying as a percipient business as a witness deposed by Respondent, which
15 participation required by Phil Su pursuant to Respondent’s subpoena falls squarely within the
16 scope of work for which Phil Su is engaged with the Board. In turn, the Board should be
17 compensated for Phil Su’s work attendant with his work on behalf of the Board.
18

19 The Board also retained the services of General Counsel Jason Dworin, Esq. and of
20 Deputy Attorneys General Rosalie Bordelove, Esq., and Harry Ward, Esq. For their services
21 during the course of the formal hearing, the prosecution is seeking a total of \$9,664.32. *See*
22 *Brown Decl.* ¶ 41.
23

24 As for the objection to paying non-deliberating Board members raised by Respondent,
25 under NRS 631.180, Board members are entitled to be compensated for work performed while
26 engaged in the business of the Board. Thus, even a Board member who recuses himself or
27 herself may appear, observe, remain apprised, and notwithstanding recusal, the Board member
28

1 may still be included as part of the quorum even if a Board member does not deliberate.
2 Respondent's objections should be overruled and the Motion for fees and costs should be
3 granted.

4 **4. The Result**

5 Dr. Capurro does not dispute that the Board was successful. Rather, she attempts to
6 foul the Board for its rejection of Dr. Capurro's settlement offer. The acceptance or rejection a
7 settlement offer is wholly irrelevant to the result of Board counsel's efforts. Indeed, it is well
8 established that the power to accept or reject a settlement offer lies solely with the client. A
9 client's decision on settlement has nothing to do with counsel's efforts or the end result of
10 these proceedings.

11 As a result of their attorneys' efforts, NSBDE prevailed in this case on each of the
12 counts presented: **Count I** (Violations of NRS 631.271(1)(a), (1)(c) and (1)(e); **Count II**
13 (Violations of NRS 631.271(3)(a) and (3)(b); NRS 631.400(3)(a); NRS 631.3475(2) and (4);
14 NRS 631.349; and NAC 631.230(1)(c); and **Count III** (Recovery of Attorney Fees and Costs
15 Pursuant to NRS 622.400) as set forth in the Amended Complaint. This is not a case where
16 the results were mixed or where there was only partial success. Indeed, NSBDE entirely
17 succeeded in its prosecutorial efforts, which was wholly attributable to the dedicated efforts of
18 its attorneys in the face of, at times, contentious, if not outright abusive, practices by the
19 defense. Pursuant to statute, NSBDE is entitled to an award of reasonable attorneys' fees and
20 costs. (NRS 622.400(1)).

21 The initial contract for Lewis Roca was for \$45,450, and was approved by this Board
22 at its January 20, 2021 board meeting. The supplemental request for a budget increase was
23 submitted on May 7, 2021, was approved by the Board at its May 18, 2021 board meeting for
24 a new total approved litigation budget of \$73,925.00.

25 Between the revised litigation budget and the time it took to complete the hearing in
26 this matter the complexion of this board action took on a very contentious turn, and Lewis
27 Roca is submitting contemporaneously with this Motion a second request for a litigation
28

1 budget increase to take into account the unanticipated litigation fees and costs that have arisen
2 in this case since the May 18, 2021 budget increase. The additional actions taken by the
3 defense included the filing of no less than seven written motions, all in an attempt to
4 undermine or dismiss these proceedings, and all of which were, it is important to note,
5 ultimately unsuccessful. Moreover, because of defense counsel's numerous interjections
6 during prosecution's case in chief, the duration of this hearing increased from what was
7 anticipated to be a two day hearing, into a hearing that ran no less than forty-eight (48) total
8 hours. As a result, Lewis and Roca seeks, on behalf of NSBDE, a revision of the total amount
9 of the approved litigation budget in the amount of \$231,119.00.

10 Again, this increase is a direct result of the actions taken by Dr. Capurro and her
11 counsel during the course of the formal board hearing, which commenced in May 2021 and
12 that continued through November 2021. The request for new budget approval also reflects
13 numerous significant changes to the complexion of this investigation and prosecution in the
14 seven (7) month period since the first budget request was submitted.

15
16 **III. CONCLUSION**

17 Based upon the forgoing reasons and the record before this Board Lewis Roca
18 requests that this Board award the full amount of its attorneys' fees and costs against the
19 Respondent Antonina Capurro, DMD, and that this Board overrule the objections raised by
20 Respondent in her Opposition. Respondent should be ordered to pay the attorneys' fees and
21 costs in the amount of \$244,107.40 for attorneys' fees and \$32,552.25 for costs, for a total of
22 \$276,659, which reflects a reduction of \$100,000.00 and does not take into account the

23 ///

24 ///

25 ///


26 ///

27 ///

28

1 \$57,000.00 to be sought from the State Court upon the conclusion of the Board's deliberations
2 and entry of a final order, findings of fact and conclusions of law.

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

4
5 By: 
6 Ogonna M. Brown, Esq. (NBN 7589)
7 OBrown@lewisroca.com
8 3993 Howard Hughes Parkway, Suite 600
9 Las Vegas, Nevada 89169
10 *Attorneys for Judgment Creditor*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

