

Final agency action regarding decision below:

REQHRG Date hearing requested

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 99F-10633-MDX

**KENNETH M. FISHER, M.D.
Holder of License No. 12762
For the Practice of Medicine
In the State of Arizona**

**DECISION AND ORDER DENYING
RESPONDENT'S PETITION FOR AN
AWARD OF ATTORNEY FEES AND
COSTS**

Re: Investigation No. 10633

Respondent has filed a Petition for an Award of Attorney Fees and Costs in this matter. The Arizona Board of Medical Examiners ("BOMEX") opposes such an award.

Pursuant to A.R.S. §41-1007(A), an administrative law judge "shall award fees and other costs to any prevailing party in a contested matter or an appealable agency action brought pursuant to any state administrative hearing authority". To be considered a prevailing party, that statute requires that both the agency's position be determined to have not been substantially justified and that the party prevail as to the most significant issues or set of issues.

Respondent is found to have timely filed his request for an award of fees and costs as required by A.R.S. §41-1007(C).

Upon review and consideration of the contents of Respondent's Petition for an Award of Attorney Fees and Costs, and BOMEX's opposition to it, as well as of the entire record in this matter, it is determined that Respondent is not the prevailing party in this matter. Therefore, Respondent is not entitled to an award of fees and costs.

IT IS ORDERED that Respondent's Petition for an Award of Attorney Fees and Costs be denied.

This Decision and Order is subject to judicial review pursuant to A.R.S. §41-1007(E).

...

...

Done this day, November 22, 1999.

Brian Brendan Tully
Administrative Law Judge

Copy mailed this ____ day of
_____, 1999, to:

Claudia Foutz, Executive Director,
Board of Medical Examiners
1651 East Morten, #210
ATTN: Melissa Cornelius
Phoenix, AZ 85020

Kenneth M. Fisher, M.D.
1444 W. Bethany Home Road
Phoenix, Arizona 85013

Calvin Raup, Esq.
Goodwin & Raup
3636 N. Central, Ste. 1200
Phoenix, Arizona 85012-1942

Gordon S. Bueler, Esq.
Assistant Attorney General
1651 East Morten, Suite 210
Phoenix, Arizona 85020

By _____