

LEGISLATIVE REVIEW: IMPACT OF AMENDMENT TO I.C. §12-117 (ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES)**June 25, 2018****Author:** Jennifer Swajkoski**I.C. §12-117**

During the last legislative session, the Idaho Legislature adopted amendments to I.C. §12-117, which deals with attorney's fees in administrative proceedings – including administrative judicial proceedings. The amendments can be found in Senate Bill No. 1316 and will go into effect on July 1, 2018.

AMENDMENTS

The amendment adds a new section 5, while the previous section 5 (definitions) has been moved to section 6. Under the new section 5, a prevailing party involved in an administrative proceeding or administrative judicial proceeding is entitled to recover reasonable attorney's fees and reasonable investigative or defense costs. Under the new section 6, the statute now defines "licensing authority" to include: any professional or occupational licensing board charged with granting, suspending or revoking the license or certification of any individual to practice a profession or occupation.

WHAT THIS MEANS

This provision applies to licensing boards, including the Idaho State Board of Medicine (ISBM) and the Idaho Board of Nursing (IBN). Based on the statutory language and comments, this provision pertains to licensing issues but likely does not apply to pre-litigation screening panels before the ISBM. As a result, any investigative/administrative proceedings initiated by these licensing boards will be subject to the new amendments. Under the new amendments, the "prevailing party" is now entitled to reasonable attorney's fees and investigative fees. What this means is if the licensing board "prevails" on its issue, it may seek to recover any reasonable attorney's and investigative fees it incurred. On the other hand, if the practitioner "prevails," then he/she will be entitled to recover any reasonable attorney's and investigative fees he/she incurred during the proceedings.

MOVING FORWARD

Professionals who are being investigated or otherwise put through an administrative proceeding with their respective professional licensing board may now be more incentivized to retain an attorney – given the prospect that, if they prevail, they will be able to recover the attorney's fees and associated investigative costs.

Professional licensing boards may also be more incentivized to conduct more in-depth investigations as they will be entitled to the cost of reasonable investigative fees. Additionally, professional licensing boards will likely want to spend more time investigating on the front end – before beginning administrative proceedings – due to the potential consequence of having to reimburse the adverse party for the cost of his/her attorney's fees and reasonable investigate costs.

Please contact a Gjording Fouser lawyer at 208.336.9777 if you would like any additional information about this topic or any other issue facing your company.