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MEMORANDUM

TO: ALPENA COUNTY FINANCE COMMITTEE  
FROM: CYNTHIA MUSZYNSKI, ALPENA COUNTY PROSECUTOR  
RE: EXPERT WITNESS FEES

The Prosecutor's Budget has never accounted for Expert Witness Fees. Until now, any or all expert witnesses for the prosecution have either donated their time and expertise, or been an employee of a law enforcement agency and therefore testified in their professional capacity and part of their usual employment.

In the past 18 months, law enforcement have been able to successfully investigate the overdose deaths which occurred in Alpena County – “successfully” meaning a source for these drugs has been identified and arrested on Delivery Causing Death charges. As part of this response and investigation, Medical Examiner Investigators were called to the scenes and will need to testify at trial at for as much as the \$500 fee stated in the contract. They are contracted employees under the Mid Michigan Medical Examiner Group LLC (MMMEG) contract signed by Alpena County. It is my understanding that when an autopsy is requested by law enforcement, or is ordered by the Medical Examiner Investigator, then the service and location of that autopsy are decided by an employee of MMMEG.

The three bodies recovered from the scenes were sent to Sparrow Forensic Pathology in Lansing. The toxicology testing, which is the crux of an overdose causing death case, was done at AXIS Forensic Toxicology. In order to admit the evidence that the young men had the drugs in their system at the time of their death, the toxicologist must testify about the testing process and the results. Attached is the fee schedule for providing such testimony.

The fee schedule is broken into 3 parts. In order to present the evidence at trial, we will need the toxicologist to testify as listed in Item #2. This would necessitate a \$1500 down payment for the expert to agree to testify for us. We would also need to have, and be able to provide to defense, the items listed in the Tier Two litigation packet listed under Item #1, of specific importance, the chain of custody documentation. I have requested a quote for the price of that item, for each individual victim, as well as the upfront retainer fee amount for those items. I have also requested that Defense allow the expert to testify remotely to eliminate

travel time and accommodation fees. The Defendant must however stipulate and agree to allow that to happen at the trial.

I am requesting that the Board approve the use of the funding within the Professional Witness Fees line item 101-648-811.000 within the Medical Examiner's Budget to use for this purpose. It is difficult approximate just how much will be necessary. Unfortunately this preparation must be done simultaneous to plea negotiations continuing as well. These negotiations always continue because even if at the eleventh hour, or in this case, a week before the trial, resolving the case would save money in transportation and hours of testimony charges. For these three cases however, the \$1500 retainer for each of the three total victims described above would be the anticipated minimum needed to start the process.

I hope to hear back on from the toxicologist within the next week to have a better idea of the case-specific estimated costs.

Thank you for your continued support,



Cynthia M. Muszynski



# FEE SCHEDULE FOR LITIGATION SUPPORT

Please direct questions to the Axis Forensic Toxicology Litigation Support Administrator at [litigation@axisfortox.com](mailto:litigation@axisfortox.com) or via phone at 317-759-4TOX.

Axis accepts check, credit card or ACH payment. Payments may be made on our website or mailed to:

Axis Forensic Toxicology  
Attn: Litigation Support  
P.O. Box 681513  
Indianapolis, IN 46268-7513

## ITEM 1: FEE SCHEDULE FOR LITIGATION DOCUMENT REQUESTS

Axis Forensic Toxicology requires a subpoena or letter of authorization requesting the tier packet which includes the Axis case number, physical address to send certified documents, and payment in full in order to release the documents.

The requisition form and final report are provided free of charge. Tier packets 2-4 are billed in hourly increments at an hourly rate of \$300. Based on the specifics of the case, we will quote you a price for the requested documents.

### TIER 1 - ANALYST LIST FEE: \$100

#### Services Included

- A list of all analysts who performed each task for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.

### TIER 2 - LITIGATION PACKET FEE: approximately 2-3 hours, maximum \$1200

#### Services Included

- A list of all analysts who performed each task for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied chain-of-custody for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied raw data for each assay in which the specimen was included. This includes the raw data for the specimen of interest only.

### TIER 3 - EXTENDED LITIGATION PACKET FEE: approximately 3-4 hours, maximum \$1500

#### Services Included

- A list of all analysts who performed each task for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied chain-of-custody for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied raw data for each assay in which the specimen was included. This includes the raw data for the specimen of interest only.
- Copied quality control data for each assay in which the specimen was included. Calibration data is not included unless otherwise specified by the client.

### TIER 4 - FULL LITIGATION PACKET FEE: approximately 4-6 hours, maximum \$2100

#### Services Included

- A list of all analysts who performed each task for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied chain-of-custody for each assay in which the specimen was included. This includes all screening assays and confirmation assays resulting in both positive and negative results.
- Copied raw data for each assay in which the specimen was included. This includes the raw data for the specimen of interest only.
- Copied quality control data for each assay in which the specimen was included. Calibration data is not included unless otherwise specified by the client.
- Copies of all AXIS Forensic Toxicology's Standard Operating Procedures outlining the methods utilized in the extraction, screening, confirmation, and data analysis for the specimen of interest.

# FEE SCHEDULE FOR LITIGATION SUPPORT

## ITEM 2: FEE SCHEDULE FOR AXIS TOXICOLOGIST TESTIMONY, DEPOSITION, CONSULTATION, AND EXPERT OPINION SERVICES\*\*

SERVICE INCLUDED	FEE
Toxicologist testimony, deposition, or consultation via SKYPE, phone, or in person (per hour charge applies to all applicable travel and wait time)	\$350 per hour/per person**
Travel expenses and all other costs and expenses	Charged at cost/per person
Deposit on Account (payable at time of Engagement Agreement signing)	\$1500
Multi-day Engagement	\$2800 per day (maximum), plus expenses/per person
Cancellation Fee	\$250 per person, plus expenses/per person

*\*\*Hourly fees include, but are not limited to, portal to portal, literature research, preparation time for testimony, deposition or affidavit. Expenses include, but are not limited to meals, transportation, hotel, car rental, etc. Once the deposit is received, research will begin for the case. All travel-related reservations will be finalized no earlier than seven (7) business days prior to the court date. If the court date is cancelled or postponed, or personnel are no longer needed after travel arrangements are completed, the cancellation fee will be imposed along with all non-refundable expenses and time incurred.*

## ITEM 3: FEE SCHEDULE FOR AXIS ANALYST FACT WITNESS

*This fee schedule is applicable only to the laboratory analyst testimony services in criminal proceedings for testing performed by Axis when an Axis analyst receives a subpoena to testify regarding the chain of custody, testing methodology, and validity of the Axis test results ("Fact Witness Fee Schedule"). This does not include any opinions or interpretation.*

*This fee schedule does not include Axis toxicologist testimony. Axis toxicology services and fees can be found under Item 2: FEE SCHEDULE FOR AXIS TOXICOLOGIST TESTIMONY, DEPOSITION, CONSULTATION, AND EXPERT OPINION SERVICES*

SERVICE INCLUDED	FEE
Laboratory analyst deposition and/or trial testimony services (including preparation time) regarding the test procedure and results originally performed by Axis	\$50 per hour/per person
Travel expenses and all other costs and expenses	Charged at cost/per person

## Engagement for Toxicology Expert Opinion Services

Thank you for selecting Axis Forensic Toxicology ("Axis") to provide toxicology expert opinion services. The purpose of this engagement letter ("Agreement") is to outline the nature of the engagement and our respective responsibilities and expectations under this Agreement.

**Scope of the Engagement:** Axis Forensic Toxicology has been asked to provide toxicology expert opinion services for the following matter:

Axis Case Number: 3268261 & 3268264

Cause Number: 23-002425 FC

Court: 26th Circuit Court

On behalf of/ hiring party or entity: Alpena County Prosecutor's Office

The scope of this engagement is limited to providing toxicology expert opinion in the matter referenced above and may include evaluation and/or interpretation of laboratory test results, review of other relevant documents, preparation of a report regarding the laboratory test results and related conclusions, deposition and trial testimony (including preparation for such testimony). Axis may limit the scope of the services provided at Axis's sole discretion. After this engagement concludes, Axis and its employees have no further obligation to provide any additional services to you. As such, if there are any later legal or other developments that may impact your future needs for toxicologist services, you will have to engage Axis separately to consult on such developments.

We will do our best to serve you efficiently. The outcome of any matter is subject to inherent risks and other factors beyond our control. Therefore, we have not made, and cannot make, any guarantees or promises concerning the outcome of this matter.

**Fees:** Please refer to the *Fee Schedule for Litigation Support* form for the current fees for Axis toxicology expert opinion services. The total fees will depend on the scope of the services requested, the complexity of the matter, and the amount of time required to complete the services.

**Note:** If any laboratory testing services are required as part of the toxicology expert opinion services, the charges for such testing services will be in accordance with the then current Axis Forensic Toxicology testing fee schedule for the applicable test(s). *Provided*, however, that Axis Forensic Toxicology reserves the right, at its sole discretion, to adjust the charges for such testing to accommodate any special requirements of such testing. Axis Forensic Toxicology will notify the requestor of the testing services of the applicable laboratory testing charges before the laboratory testing services are performed.

**Retainer:** In consideration of our services, we require a retainer in the amount provided on the *Fee Schedule for Litigation Support* form, which will be applied to our billable charges. We will draw on your retainer to satisfy our billing statements, copies of which will be sent to you. When your retainer is exhausted, we will so advise you and you agree to pay all further statements within thirty (30) days of the

statement date. Any unused portion of the retainer will be refunded to you at the end of the engagement.

**Expenses:** In addition to our fees, in the course of providing services to you, we may incur expenses for services such as printing, photocopying, delivery services, telephone usage, postage, fax transmissions, document binding, travel, lodging, and meals. The actual expenses incurred depend on the services that we provide to you. Expense items incurred on your behalf will be itemized separately on our billing statements.

**Billing:** Generally, our billing statements for fees and expenses will be prepared and mailed to you monthly. If a statement is not paid within thirty (30) days of the statement date, a finance charge computed at the periodic rate of one (1) percent (%) simple interest per calendar month (i.e., to produce an approximate effective Annual Percentage Rate of (12) percent (%) on the unpaid principal balance) will be imposed on your account balance that is outstanding after thirty (30) days from the statement date.

If full payment on the final billing statement is not received within ninety (90) days of the billing, Axis may elect to enforce the obligation through legal process. Any statement will be deemed to be accepted and affirmed by you unless objected to in writing within thirty (30) days of the date of the statement. Failure to give notice of any such objection within thirty (30) days constitutes a waiver of objection and the fees will be deemed due and owing. You agree to pay any and all fees and costs incurred in the collection and enforcement of this Agreement, including, but not limited to, attorney fees.

In the event that you fail to remain current in the payment of the fees and expenses as provided herein, you agree that we may at any time thereafter cease providing any further toxicology expert opinion services work in the matter on thirty (30) day notice to you.

**Termination of the Services and the Agreement:** You shall have the right to terminate the toxicology expert opinion services under this Agreement at any time by providing written notice to Axis. Such termination, however, shall not relieve you of the obligation to pay for all services rendered and costs or expenses incurred on your behalf in accordance with this Agreement prior to the date of the receipt of such termination notice. Axis has the right to terminate the representation for good cause, subject to an obligation to give you reasonable notice to arrange for alternative toxicology expert opinion services. Good cause includes, but is not limited to, (a) your failure to honor the terms of the engagement, (b) your failure to cooperate with Axis's toxicologist to enable the toxicologist to provide expert opinion services, or (c) your failure to pay for services rendered. In the event that we terminate the engagement, you remain obligated to pay all outstanding balances.

**Choice of Law and Forum:** This Agreement, and all questions relating to its validity, interpretation, performance and enforcement, is governed by the State of Indiana law without regard to its principles of conflicts of law. The state or federal courts of the State of Indiana in Marion County shall be the exclusive forums for litigation concerning this Agreement or any aspect of our engagement. You consent to personal jurisdiction in such courts.

**Entire Agreement:** This Agreement constitutes the sole and entire agreement between us with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in this Agreement and other documents, the statements in this Agreement shall control.

*Please sign this Agreement and return it to:*

**Axis Forensic Toxicology**  
**Attn: Litigation Support**  
**P.O. Box 681513**  
**Indianapolis, IN 46268**  
**Email: [Litigation@axisfortox.com](mailto:Litigation@axisfortox.com)**  
**Fax: (317) 481-8872.**

ACCEPTED AND AGREED to:

By: \_\_\_\_\_  
*Signature*

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Entity: \_\_\_\_\_

Date: \_\_\_\_\_