

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Automatic Revocation
Order Against:

David Lee Haller, M.D.

Physician's and Surgeon's
Certificate No. G 80488

Respondent.

Case No. 800-2018-044476

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 11, 2023.

IT IS SO ORDERED August 11, 2023.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Automatic Revocation Order Against:

DAVID LEE HALLER, M.D., Respondent

Agency Case No. 800-2018-044476

OAH No. 2022120797

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 12, 2023.

Keith C. Shaw, Deputy Attorney General, represented complainant, William Prasifka, Executive Director of the Medical Board of California (board), Department of Consumer Affairs, State of California.

C. Ryan Fisher, Attorney at Law, Manatt, Phelps & Phillips, L.L.P., represented respondent David Lee Haller, M.D., who did not appear.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 12, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 4, 1995, the board issued Physician's and Surgeon's Certificate Number G 80488 to respondent.
2. On October 14, 2022, the board issued an automatic suspension order-no practice against respondent's certificate pursuant to Business and Professions Code Section 2232.
3. On November 8, 2022, the board filed a Notice of Automatic Revocation of License of respondent's certificate alleging that on or about August 29, 2022, in the Superior Court of California, County of Orange, in Case No. 18HM08176, respondent was found guilty by a jury of two separate misdemeanor counts of violating Penal Code section 647.6, subdivision (a)(1), annoying and/or molesting a minor.

As a result of the jury verdict, on October 14, 2022, the court sentenced respondent to: (1) serve 365 days in jail; (2) register as a tier 1 sex offender (10-year minimum registration) pursuant to Penal Code section 290.006 because respondent committed the offenses as a result of sexual compulsion or for the purposes of sexual gratification; (3) serve one year of formal probation; (4) to not associate with minors or frequent places where minors congregate, including schools, parks, amusement parks, concerts, playgrounds, swimming pools, and arcades; (5) to not use or possess any type of photographic equipment without prior written permission of the probation officer; (6) to not contact, either directly or indirectly, either victim (protective order in effect for a period of 10 years); (7) to not go within 100 yards of either victim; (8) to not date anyone who has children under 18 years old without prior written permission

of the probation officer; (9) to not own, use, or possess any type of child erotica (pedophilic paraphernalia) or any illustrated materials depicting unclothed children; (10) to submit to continuous electronic/GPS monitoring as directed by the probation officer; (11) to not subscribe or have access to any form of online internet service without prior written permission of the probation officer; (12) to not use, own, or possess any type of sexually explicit movies, videos, materials, or devices; and (13) comply with the standard terms and conditions of probation.

4. On December 7, 2022, respondent requested a hearing on the Notice of Automatic Revocation of License pursuant to Business and Professions Code section 2232, subdivision (b), and this hearing followed.

Complainant's Evidence

5. Complainant provided the following documents, which were received into evidence, in support of the Automatic Revocation of License: (1) a certified copy of the Amended Criminal Complaint in respondent's criminal case; (2) a certified copy of Verdict forms in respondent's criminal case; (3) a certified copy of Superior Court minutes in respondent's criminal case; (4) a certification of licensure from the board regarding respondent's Physician's and Surgeon's Certificate.

Cost of Investigation and Enforcement

6. Complainant seeks recovery of enforcement costs of \$12,340 pursuant to Business and Professions Code section 125.3. In support of the request, the Deputy Attorney General who prosecuted the case signed a declaration requesting costs for legal work billed through June 1, 2023, totaling \$12,340. Attached to the declaration was a document entitled "Matter Time Activity by Professional Type." These documents identified the tasks performed as: "Case Evaluation/Assessment,"

"Analysis/Strategy," "Discovery," "Pleading preparation," "Case Management," "Research," "Investigation," "Client Communication," "Communication with Other Party," "Evidentiary Preparation - Other," "Other Submission/Motion/Appearance," and "Trial Preparation." The attachment to the declaration also provided the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate of the individuals who performed the work. The attachment to the declaration showed that the Deputy Attorney General who appeared at the hearing spent a total of 45.50 hours working on this matter, his supervising Deputy Attorney General spent 4.75 hours working on this matter, another Deputy Attorney General spent 0.25 hours on the matter, and a paralegal spent 6.0 hours working on this matter.

7. Complainant also submitted a declaration of investigative costs in this matter signed by the Supervising Investigator I with the Department of Consumer Affairs and attaching a form containing a general description of the tasks performed, the time spent on the tasks, and the hourly rate charged for the work of the investigator assigned to this matter. The certification of investigative costs submitted in this matter established that the board billed \$1,224.50 for 7.75 hours expended on this case for investigation for work performed from September 2, 2022, to November 4, 2022.

8. Accordingly, the total costs of investigation and enforcement complainant seeks in this matter total \$13,564.50. An analysis of the reasonableness of these investigative and enforcement costs is provided below.

Respondent's Argument

9. Respondent did not dispute respondent's conviction or the applicability of Business and Professions Code section 2232 that resulted in the automatic revocation of respondent's license. However, respondent's attorney did dispute the reasonableness of complainant's costs of investigation and enforcement in this matter given the simplicity of the application of Business and Professions Code section 2232 in this case. Furthermore, respondent's attorney argued that because respondent is unable to practice as a physician because of his license revocation, he is in a very precarious financial position.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that respondent has incurred a conviction for which Business and Professions Code section 2232 applies to automatically revoke his license. Respondent bears the burden of proof of establishing that the automatic revocation of his license was beyond the scope of Business and Professions Code section 2232. (Evid. Code, § 115; 500.) The standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Statutes and Regulations

2. Business and Professions Code section 2232¹ provides, in part, as follows:

(a) Except as provided in subdivisions (c), (d), and (e), the board shall automatically revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the related conviction has been appealed. The board shall notify the licensee of the license revocation and of his or her right to elect to have a hearing as provided in subdivision (b).

(b) Upon revocation of the physician's and surgeon's certificate, the holder of the certificate may request a hearing within 30 days of the revocation. The proceeding shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

¹ Business and Professions Code section 2232 was amended effective January 1, 2023. However, the previous version of the statute is applicable in this matter as respondent's Physician's and Surgeon's Certificate was automatically revoked prior to the effective date of the amended statute.

(c) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

[¶] . . . [¶]

(e) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

(f) If the related conviction of the certificate holder is overturned on appeal, the revocation ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(g) The other provisions of this article setting forth a procedure for the revocation of a physician's and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

3. Business and Professions Code section 125.3 provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board

within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if

the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

4. California Code of Regulations, title 1, section 1042, provides:

(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.

(b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

(3) When the agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available.

(4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs.

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

Evaluation

5. Respondent does not challenge his conviction or the application of Business and Professions Code section 2232 that resulted in the automatic revocation of his Physician's and Surgeon's Certificate. Based on the evidence of his conviction, cause exists for the automatic revocation of respondent's Physician's and Surgeon's Certificate. Respondent's only assertion in this hearing is that the amount of the costs

of enforcement and investigation is unreasonable in light of the nature of this matter, and that costs should be reduced given respondent's precarious financial situation after the revocation of his Physician's and Surgeon's Certificate.

6. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).)

7. The Office of Administrative Hearings has enacted a regulation for use when evaluating an agency's request for costs under Business and Professions Code section 125.3. (Cal. Code Regs., tit. 1, § 1042.) Under the regulation, a cost request must be accompanied by a declaration or certification of costs. For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and describe the general tasks performed, the time spent on each task, and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

8. California Code of Regulations, title 1, section 1042, subdivision (b), requires that any declaration seeking costs include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." The certification of enforcement costs in this matter did not satisfy the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), because the

certifications did not provide sufficient specificity with regard to the tasks performed, and the number of hours expended were not reasonable in light of the straightforward and simple nature of this matter. This matter is an automatic revocation of respondent's license based exclusively on his conviction record. It is unclear why such tasks as analysis, investigation, case evaluation/assessment, research required as many hours as was billed in this case. There appears to be no reasonable need for 45.5 hours of work related to activities and tasks described in the declaration attachment in this matter. Accordingly, a reduction in the amount of enforcement costs in this matter is warranted, as discussed below.

The certification regarding investigation costs showing that the investigator spent 7.75 hours on this matter supports a finding that investigation costs in the amount of \$1,224.50 are reasonable in both the nature and extent of the work performed.

9. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

10. Considering the *Zuckerman* factors, the scope of the investigation was disproportionate to the allegations, although the deputy attorney general who tried the matter was very well prepared. Respondent did not attempt to challenge the

automatic revocation; but respondent presented evidence that he is financially unable to pay costs given that he is unable to make any income, particularly without his license, and he did have a subjective good faith belief in his position.

11. Accordingly, after consideration of the regulations and the *Zuckerman* factors, a reduction in the costs of enforcement is appropriate, and respondent shall pay \$3,085 in enforcement costs to the board. The costs of investigation in this matter of \$1,224.50 are reasonable.

12. Accordingly, the reasonable costs of enforcement and investigation in this matter is \$4,309.50, and respondent shall pay this amount to the board in the event he seeks reinstatement of his license.

ORDER

1. Respondent David Lee Haller, M.D.'s Physician's and Surgeon's Certificate Number G 80488, was automatically revoked by operation of law, effective October 14, 2022, pursuant to Business and Professions Code section 2232.

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2. If respondent's Physician's and Surgeon's Certificate is reinstated, respondent shall pay to the board the costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3, in the amount of \$4,309.50. Respondent shall be permitted to pay these costs in a payment plan approved by the board. Nothing in this provision shall be construed to prohibit the board from reducing the amount of cost recovery upon reinstatement of the license.

DATE: June 19, 2023

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings