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

In the Matter of the Petition to Revoke Probation Against: Everett Douglas Allen, M.D. Physician's & Surgeon's Certificate No G 54881 Respondent.	Case No.: 800-2022-085068

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Everett Douglas Allen, for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on December 1, 2022.

IT IS SO ORDERED: December 2, 2022

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 Petition to Revoke Probation Against: **Everett Douglas Allen, M.D.** **Physician's & Surgeon's Certificate No. G 54881** **Respondent.**	**Case No. 800-2022-085068** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Respondent Everett Douglas Allen, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of November 25, 2022, at 5:00 p.m.

Execution is stayed until December 1, 2022, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: November 21, 2022

William Prasifka
Executive Director
Medical Board of California

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

In the Matter of the Petition to Revoke Probation Against: Everett Douglas Allen, M.D. Physician's and Surgeon's Certificate No. G 54881 Respondent.	Case No. 800-2022-085068

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 November 25, 2022.

IT IS SO ORDERED October 25, 2022.

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 Petition to Revoke Probation Against:

EVERETT DOUGLAS ALLEN, M.D.,

Physician's and Surgeon's Certificate No. G 54881

Respondent.

Case No. 800-2022-085068

OAH No. 2022070532

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on September 6, 2022, by videoconference.

Deputy Attorneys General Kendra Rivas and Greg W. Chambers represented complainant William Prasifka, Executive Director, Medical Board of California, Department of Consumer Affairs.

Respondent Everett Douglas Allen, M.D., represented himself.

The record closed and the matter was submitted for decision on September 6, 2022.

FACTUAL FINDINGS

Procedural Background

1. On June 30, 1985, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G 54881 to respondent Everett Douglas Allen, M.D. The certificate was in effect at all times relevant to the charges in the petition. It is scheduled to expire on July 31, 2024, unless renewed.

2. Respondent has a long history of Board discipline:

a. In December 1997, respondent's certificate was placed on probation for five years due to substance abuse. Probation ended in February 2004.

b. Respondent relapsed into substance abuse and further disciplinary proceedings ensued. Respondent's certificate was placed on probation for 10 years, effective May 13, 2009.

c. Due to respondent's failure to comply with the probation terms, a petition to revoke probation was filed in June 2011. After an administrative hearing, a decision and order was issued, effective July 5, 2013, revoking respondent's certificate, staying the revocation, and imposing a new 10-year period of probation (2013 Decision). In reaching its decision not to revoke respondent's certificate, the Board concluded that respondent's non-compliance was chiefly attributable to poverty, and that he had reasonable prospects for improving his financial circumstances such that he would be able to comply with probation.

d. In December 2016, another petition to revoke probation was filed, and a first amended petition was filed in May 2017. After an administrative hearing, a

decision and order was issued, effective February 12, 2018, finding that respondent had failed to comply with conditions of probation, including biological fluid testing, quarterly psychotherapy reports, payment of probation costs, and the no solo practice prohibition (2018 Decision). The Board noted that respondent had never fully complied with probation, primarily due to poverty but also due to poor choices. The Board concluded that efforts to restore respondent's professional competence and alleviate respondent's poverty were coming to fruition and that revocation of respondent's certificate at that time would be against the public interest. Accordingly, the Board denied the petition to revoke probation. The conditions of the 2013 Decision remained in effect. Respondent was warned that he "must maintain strict compliance with the condition requiring biological fluid testing, and immediately must resume compliance with the condition requiring him to make payments to reimburse the Board for his probation monitoring and evaluation fees." At the time of the 2018 Decision, respondent owed approximately $35,000 to the Board.

3. Respondent was notified by his probation monitor in December 2021 that a petition to revoke probation was forthcoming. On April 12, 2022, respondent submitted a petition for modification of probation to the Board, in which he asked that no action be taken against him and that he be allowed until the end of 2022 to find work. He offered to borrow money to pay ongoing probation fees, if the Board would promise not to take action against his certificate until the end of 2022.

On April 27, 2022, the Board returned the petition to respondent pursuant to Business and Professions Code section 2307, subdivision (g), in light of the imminent filing of this petition to revoke probation.

4. On April 29, 2022, complainant William Prasifka filed this petition to revoke probation, solely in his official capacity as the Executive Director of the Board.

5. Respondent filed a timely notice of defense.

Non-Compliance with Probation Conditions

BIOLOGICAL FLUID TESTING

6. Condition 5 of respondent's probation requires him to participate in the Board's biological fluid testing program. Respondent is required to check in daily between midnight and 5:00 p.m., and to submit a sample at an approved collection site when selected for testing.

7. On October 27, 2020, respondent was selected to submit a hair sample for testing. Respondent failed to do so. He realized his oversight and self-reported to the Board's probation department in an email on November 2, 2020. He believed he had checked in during the early morning hours, fallen back asleep, and forgotten that he had been selected. He attributed his failure to submit a sample to a sleep disorder and described significant stress due to the pandemic, his financial circumstances, and Board probation. He denied using controlled substances since 2005.

8. On March 23, 2021, respondent again failed to provide a hair sample when selected. Respondent realized his oversight, and self-reported by email on March 25, 2021, stating that he had not been checking in daily. He was directed to provide a hair sample that day. Respondent provided a hair sample on March 26, which tested negative for prohibited substances.

9. Respondent failed to check in on January 28, 2022; February 15, 2022; March 16, 2022; and April 2, 2022.

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FAILURE TO PAY COSTS

10. Condition 7 of respondent's probation requires him to pay the Board delinquent costs for evaluations and probation monitoring, on a Board-approved installment plan, and to pay ongoing probation monitoring costs.

11. On May 25, 2020, respondent signed a payment plan, in which he agreed to pay all outstanding costs, which at the time totaled $41,335, by January 31, 2021, in quarterly payments beginning July 10, 2020.

12. Respondent has not made any payments towards the delinquent or ongoing costs since entering into the agreement.

FAILURE TO PRACTICE

13. Condition 19 of respondent's probation provides that respondent must practice medicine for at least 40 hours each calendar month, and that respondent's period of non-practice while on probation shall not exceed two years.

14. Respondent did not practice medicine from August 2019 until the summer of 2022, when he worked for a short time, a period of more than two years of non-practice. Respondent testified that he has worked as a physician for a total of 13 months in the last 17 years.

Respondent's Evidence

15. Respondent did not dispute the violations, but did not accept responsibility for his failure to comply with probation. Respondent blames the Board for destroying his career, keeping him unemployed, and engaging in "punitive

control." He compared his treatment by the Board to the treatment of inmates he witnessed when he worked at Pelican Bay State Prison.

16. Respondent denies using any controlled substances since 2005, and denies being a risk to patient safety. He noted that he was selected to provide a hair sample about one month after the missed test of October 2020, and it tested negative, as did the hair sample provided just a few days after the missed test in March 2021. He argued that these two negative hair samples substantially would have reflected any drug use during the time period that a hair sample provided on the actual dates he was selected would have reflected. Respondent also noted that during this time period, the Board switched biological testing vendors for a period and changed the requisite reporting forms, and that this disruption had been a source of anxiety for him. For more than a year during the pandemic, probationers were permitted 48 hours to submit a sample, and on at least one occasion respondent was notified that he had failed to provide a sample when in fact he had done so within the extended timeframe. Although his probation monitor resolved the matter, this situation also caused respondent anxiety.

Respondent further noted that he was candid with his probation monitors, always reporting missed check ins or tests when he became aware of them. On some occasions, respondent realized after 5:00 p.m. that he had failed to check in, and would go to provide a sample to make sure he did not violate probation, despite the potentially "wasted" expense.

In May 2021, respondent received a citation for the missed tests of October 2020 and March 2021. He paid the citation fine of $350. On January 27, 2022, respondent was notified that the citation had been withdrawn.

Respondent believes he may have been targeted by the Board when he was directed to submit a sample when he was out of state at his brother's funeral, and again when made to submit a sample on the day that he was a privileged speaker at a conference out of town.

Respondent does not believe that testing is necessary at this point in his recovery.

18. Respondent attributed some of his noncompliance with the biological fluid testing program to undiagnosed sleep apnea, which made him forgetful. He asserts this condition is now being treated and his symptoms have resolved.

19. Following the 2018 Decision, respondent obtained employment as a physician at Waterfront Recovery Services, a residential detoxification and addiction treatment facility in Eureka. He explained that this employment was initially rejected by the Board and that he had to enlist the aid of a state senator to convince the Board to approve it. He accused the Board of a practice of inhibiting him from obtaining employment. Respondent worked at Waterfront from August 2018 until August 2019, when he was furloughed "for money reasons." Respondent did not explain why he did not secure other employment in 2019. Respondent stated that he had the opportunity to return to work at Waterfront in 2020, but was hindered because when he tried to renew his certificate that July, the Board would not renew it because of his delinquent payment status. He felt as if the Board was targeting him and forcing him not to comply with probation. Ultimately, he was able to renew his license that October. He did not explain why he did not return to Waterfront at that time. Respondent provided a variety of explanations for not working during 2020 and 2021, stating that the pandemic "upended the practice of medicine" and that he experienced a "major

medical event" in June 2021 which preoccupied him for several months. Respondent did not describe any efforts to seek employment for the first half of 2022.

Respondent stated that he returned to work at Waterfront in early July 2022 and worked there for less than three weeks. He stated that the facility had to "shut down" due to an outbreak of Covid-19, and that he is unsure whether he will return to work there. He also stated that he decided to wait for the outcome of this hearing before seeking to return. Respondent did not provide any letters or testimony from individuals who worked with him at Waterfront to attest to his competence.

20. Respondent claimed that other work opportunities are about to open up to him, including the possibility of employment on an Indian reservation. He feels he has something to offer through work as a physician and hopes that he is permitted to retain his certificate.

21. Respondent testified that he has access to $15,000, and would be willing to negotiate a settlement with the Board to pay off his delinquencies for this amount. He stated that the Board has not been consistent in the figures provided to him as to how much he owes, and that this has been "daunting." He also stated that he believed there was a "tacit agreement" between him and the Board for him not to pay the delinquent payments, evidenced by the Board allowing him to retain his certificate despite his failure to make payments for so many years.

22. Respondent submitted the following four letters:

a. Samuel Ruben, M.D., worked with respondent at Pelican Bay State Prison from 1999 to 2006. Dr. Ruben wrote that respondent was well-liked by medical staff there and single-handedly improved many aspects of patient care, staff safety, and institutional safety. Dr. Ruben has remained friends with respondent and is aware of

his probation status and other challenges. He confirmed that respondent worked for Waterfront Recovery Services until the facility's grant, which paid for his services, ran out. Dr. Ruben referred respondent for an opening at the VA clinic where he now works, but the VA would not hire respondent while he is on Board probation. Dr. Ruben feels confident that respondent has adequate medical knowledge and skills to provide primary care in an outpatient setting.

b. Linda Rowe, M.D., met respondent in 2002 when both were working at Pelican Bay State Prison. She found him to be proficient, knowledgeable, insightful, and forceful in persuading all medical staff to provide the best patient-centered care. Dr. Rowe is aware of respondent's history and issues with the Board. She believes that he has maintained his physician skills. She has referred him for work in the past and believes he is qualified to provide care at outpatient clinics, urgent care clinics, infusion centers, and occupational medicine clinics.

c. Presiding Judge James Fallman of the City of Gold Beach (Oregon) Municipal Court wrote that he has known respondent since 2004 and has worked with him professionally on a number of legal matters. Judge Fallman described respondent as professional and conscientious. He added that respondent is a well-respected member of the community who has assisted indigent former prison patients, actively supported a local VA support group, mentored youth, and worked as a substitute teacher in the Crescent City schools.

d. In a letter submitted to the probation department in 2017, psychiatrist Robert E. Soper, M.D., wrote that respondent was cooperative with treatment and that his depression was in remission. Dr. Soper supported respondent's efforts to work in the community as an addiction specialist.

23. Respondent testified that he continues to suffer impoverishment. His monthly income consists of $1,100 from Social Security. He owes back taxes. He serves as custodian over a large parcel of land and in exchange he is allowed to live there rent-free. He also borrows money in order to get by.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving each of the grounds for revoking probation alleged in petition to revoke probation, and must do so by a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. Condition 5 of respondent's probation requires him to participate in the Board's biological fluid testing program. Respondent violated this condition on numerous occasions by failing to check in and failing to report for testing. Cause for probation revocation has been established, in light of the matters set forth in Factual Findings 6 through 9.

3. Condition 7 of respondent's probation requires him to make payments to the Board for delinquent costs for evaluations and probation monitoring, and for ongoing probation monitoring costs. Respondent violated this condition by failing to make any payments since entering into an agreement in May 2020 through the day of the hearing. Cause for probation revocation has been established in light of the matters set forth in Factual Findings 10 through 12.

4. Condition 19 of respondent's probation requires him to practice medicine, and provides that any period of non-practice on probation shall not exceed two years. Respondent violated this condition by failing to practice from August 2019

through July 2022. Cause for probation revocation has been established in light of the matters set forth in Factual Findings 13 and 14.

5. Business and Professions Code section 2229, subdivision (b) provides that when exercising its disciplinary authority, the Board, whenever possible, shall take action that aids in the rehabilitation of the licensee. Protection of the public, however, remains the Board's highest priority. (Bus. & Prof. Code, § 2229, subd. (a).)

6. The Board's Disciplinary Guidelines provide for license revocation as the maximum penalty for a probation violation. The Guidelines advise that the maximum penalty should be given for repeated similar offenses or for violations revealing a cavalier or recalcitrant attitude.

7. After completing a period of probation due to substance abuse in 2004, respondent relapsed in 2005, resulting in another period of probation which commenced in 2009. Respondent has consistently violated probation since that time, resulting in two previous disciplinary orders finding him in violation. Respondent has been given multiple opportunities to comply with probation and demonstrate to the Board his fitness for continued licensure.

Respondent demonstrated a cavalier attitude towards probation. He does not accept responsibility for his persistent failure to comply with probation and instead blames the Board for his noncompliance. He has been less than diligent in complying with biological fluid testing and has not made a good faith effort to maintain employment as a physician or pay the Board's costs.

Respondent has now demonstrated repeatedly that he is either unwilling to or incapable of complying with the terms and conditions of his probation. Accordingly,

revocation is the only appropriate penalty. It would be against the public interest to permit respondent to retain his physician's and surgeon's certificate.

ORDER

The Petition to Revoke Probation concerning Physician's and Surgeon's Certificate Number G 54881 issued to respondent Everett Douglas Allen, M.D., is granted. The stay of revocation is lifted and the certificate is revoked.

DATE: 09/29/2022

Karen Reichmann

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

Government Code Section 11521

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.