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FOR IMMEDIATE RELEASE

## Court upholds Board's authority to set terms for physician's probation

DES MOINES, IA – The Iowa Court of Appeals has affirmed the Iowa Board of Medicine's authority to establish and maintain probationary terms for a physician sanctioned by the Board.

In a decision filed June 15, 2011, the appeals court said the Board acted reasonably in denying a request from Patricia A. Allen, D.O., a pathologist, to terminate or shorten her probation after she had completed an educational remediation plan to address competence issues.

In October 2007, the Board found that Dr. Allen “failed to conform to the prevailing standard of care” in her diagnosis of surgical specimens when she practiced in Creston, Iowa. She was ordered to complete the educational plan and was placed on probation for five years. During the probationary term, Dr. Allen was required to establish and maintain a practice monitoring program, complete the educational plan, file quarterly reports and make annual appearances before the Board. In August 2008, Dr. Allen completed the education plan and in beginning in September 2008, she filed several applications requesting the Board terminate her probation. The Board denied her requests.

In April 2010, Dr. Allen filed a petition for judicial review of the Board's order refusing to grant early termination of the probation. A Polk County District Court upheld the Board's order, concluding the Board was not obligated to automatically shorten the probation under terms of the original order in October 2007. The appeals court affirmed the district court's dismissal of the petition for judicial review “because we agree with the district court's reasoning, its conclusions and its application of the law.”

The following is the Iowa Court of Appeals' decision:

**IN THE COURT OF APPEALS OF IOWA**

No. 1-336 / 10-1776  
Filed June 15, 2011

**PATRICIA A. ALLEN, D.O.,**  
Petitioner-Appellant,

**vs.**

**IOWA BOARD OF MEDICINE,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Patricia Allen appeals the district court's dismissal of her petition for  
judicial review. **AFFIRMED.**

Michael M. Sellers of Sellers, Haraldson, and Binford, Des Moines, for  
appellant.

Thomas J. Miller, Attorney General, and Julie J. Bussanmas, Assistant  
Attorney General, for appellee.

Considered by Vogel, P.J., and Potterfield and Tabor, JJ.

**VOGEL, P.J.**

On December 26, 2006, the Iowa Board of Medical Examiners (Board) charged Patricia A. Allen, a D.O. pathologist, with professional incompetency. After hearing, a panel of the Board issued its proposed decision on April 30, 2007, citing Dr. Allen “for failing to conform to the prevailing standard of care.” Dr. Allen appealed and the Board conducted an appeal hearing on September 13, 2007. On October 15, 2007, the Board’s final order cited Dr. Allen and “concluded that some modifications should be made to the panel’s proposed sanction.” The Board ruled:

**CONCLUSIONS OF LAW**

....

In order to address the concerns documented by the peer review report and the CPEP [Center for Personalized Education for Physicians] assessment report and in order to protect the public interest, [Dr. Allen] must be restricted from practicing pathology under her Iowa medical license until she establishes a Board approved remediation plan that addresses the areas of need identified by CPEP. [Dr. Allen] will then be required to serve a period of probation while she fully complies with all aspects of the approved remediation plan.

**DECISION AND ORDER**

IT IS THEREFORE ORDERED that . . . Patricia Allen, D.O., is hereby CITED for failing to conform to the prevailing standard of care in her anatomic pathology practice in Iowa. . . .

IT IS FURTHER ORDERED that [Dr. Allen] is RESTRICTED from practicing . . . under her Iowa medical license until she submits and obtains Board approval of a formal educational plan with an educational preceptor, designed for [Dr. Allen] by [CPEP]. The educational plan must address all areas of demonstrated need identified in the assessment.

Upon Board approval of the remediation plan, [Dr. Allen] shall be placed on probation for a period of five (5) years, subject to the following terms and conditions:

- A. Monitoring Program . . . .
- B. Recommendations of CPEP and the Board . . . .
- C. Quarterly [Compliance] Reports . . . .
- D. [Annual] Board Appearances . . . .

E. [Quarterly] Monitoring Fee . . . .

On November 7, 2007, the Board voted to approve Dr. Allen's CPEP education plan and terminated her restriction from practicing medicine. On November 14, 2007, Dr. Allen appealed the Board's final order. However, on December 4, 2007, Dr. Allen withdrew her appeal.

On August 6, 2008, CPEP notified Dr. Allen that her educational intervention "is now concluded." Starting in September 2008, Dr. Allen filed several applications requesting the Board terminate her probation. The Board denied her requests. In April 2010, Dr. Allen filed a petition for judicial review with the district court.

In denying Dr. Allen's separate request to present oral argument to the Board during its June 2010 meeting, the administrative law judge ruled:

There is no requirement that the board hear oral argument in any appeal other than the appeal of a panel decision in a contested case. . . . [Dr. Allen] cites the board's rules regarding reinstatement following suspension or revocation. . . . Those rules are not applicable here because [her] license has not been suspended or revoked.

. . . . The board has entered an order setting probation at five years and that order is now final. The board has no obligation even [to] consider an application for termination of probation, let alone grant oral argument.

In August 2010, the district court held a hearing on Dr. Allen's petition for judicial review. In September 2010, the court denied Dr. Allen's request for attorney fees, taxed costs to her, and dismissed her petition, ruling:

This is not a "denial of reinstatement" case. [Dr. Allen's] license is not suspended or revoked. She is on probation. [Dr.] Allen's license was originally suspended but was reinstated automatically once the Board approved her education plan. With the reinstatement came a five-year probationary term with

numerous conditions. Nothing in the Order guaranteed an early termination of the probationary period or automatic termination upon successful completion of her educational plan. Dr. Allen's repeated applications for discharge from probation have been rejected by the Board. Nothing in the [unappealed, final] Order compels or obligates the Board to shorten the probationary term.

....

This case presents an untimely appeal of the Board's final order dated October 15, 2007. The failure to petition within 30 days after the Board's final decision leaves this court without jurisdiction to hear her claim. The petition for judicial review must be dismissed.

....

[Alternatively,] [a]ssuming that this case does present "other agency action," the Court nonetheless considers the Board's conduct reasonable.

On appeal to this court, Dr. Allen raises the identical issues thoroughly discussed and resolved by the district court. Because we agree with the district court's reasoning, its conclusions, and its application of the law, we affirm pursuant to Iowa Court Rule 21.29(1)(d) and (e). We deny Dr. Allen's request for appellate attorney fees. Costs are taxed to Dr. Allen.

**AFFIRMED.**