STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 24, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roy Nemerson, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, NY 10001

Greenspan & Greenspan, Esq..
BY: Leon J. Greenspan, Esq.
34 South Broadway
White Plains, NY 10601-4400

Charles Clement Lucas, Jr., M.D.
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Charles Clement Lucas, Jr., M.D.
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RE: In the Matter of Charles Clement Lucas, Jr., M.D.

Dear Mr. Nemerson, Mr. Greenspan and Dr. Lucas:

Enclosed please find the Determination and Order (No. BPMC-96-304) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt **or** seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER

OF

CHARLES CLEMENT LUCAS, Jr., M.D.

DETERMINATION
AND
ORDER
BPMC 96 - 304

OLIVE M. JACOB, (Chair), **ANDREW CONTI, M.D.**, and **RALPH LEVY, D.O.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, ("ALJ") served as the Administrative Officer.

The Department of Health appeared by **ROY NEMERSON, ESQ.**, Deputy Counsel.

Respondent, **CHARLES CLEMENT LUCAS, Jr., M.D.**, appeared personally and was represented by **GREENSPAN & GREENSPAN, LEON J. GREENSPAN, ESQ.** and **MICHAEL E. GREENSPAN, ESQ.**, of counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	July 16, 1996
Date of Service of Notice of Hearing and Statement of Charges:	July 31, 1996
Answer to Statement of Charges:	None filed
Pre-Hearing Conference Held:	August 12, 1996
Hearings Held: - (First Hearing day):	August 20, 1996 October 25, 1996
Intra-Hearing Conference Held:	August 20, 1996
Petitioner's Proposed Findings of Fact, Conclusions and Recommendations:	None Requested
Respondent's Proposed Findings of Fact, Conclusions and Recommendations:	None Requested
Witnesses called by the Petitioner, Department of Health:	James Warren Brown, M.D.
Witnesses called by the Respondent, Charles Clement Lucas, Jr., M.D.:	Charles Clement Lucas, Jr., M.D.
Deliberations Held: (preliminary) (Last Hearing day): (final)	October 25, 1996 and December 23, 1996

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§ 230 et seq. of the Public Health Law of the State of New York ["**P.H.L.**"]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("**Petitioner**") pursuant to § 230 of the P.H.L. CHARLES CLEMENT LUCAS, JR., M.D., ("**Respondent**") is charged with two specifications of professional misconduct, as delineated in § 6530 of the Education Law of the State of New York ("**Education Law**").

Respondent is charged with professional misconduct by reason of practicing the profession while being a substance abuser or by reason of having a psychiatric condition which impairs his ability to practice[1]. Respondent is also charged with practicing the profession while being impaired[2].

The charges concern Respondent's alleged polysubstance abuse and/or psychotic disorder and/or mental illness. A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

Respondent admits to being licensed to practice medicine in New York. Respondent denies any past or present impairment of his abilities to practice medicine.

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[1] Education Law § 6530(8) "Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice;" and see also First Specification in Petitioner's Exhibit # 1.

[2] Education Law § 6530(7) "Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability;" and see also Second Specification in Petitioner's Exhibit # 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence or testimony, the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on October 16, 1981 by the issuance of license number 147930 by the New York State Education Department (Petitioner's Exhibits # 1 & # 3)[3].

2. Respondent is registered with the New York State Education Department to practice medicine for the period January 1, 1995 through July 31, 1997 (Petitioner's Exhibit # 3).

3. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the Administrative Officer; Respondent had no objection regarding the attempt at personal service [except for hearsay and relevancy] and no objection to the mailing effected on him); (P.H.L. § 230[10][d]); (Petitioner's Exhibits # 1 & # 2); [P.H.T-6-8][4].

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[3] Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit #). Dr. Charles Lucas did not submit any exhibits. The Hearing Committee requested a report which was accepted in evidence and marked as (Hearing Committee's Exhibit #).

[4] Numbers in brackets refer to Hearing transcript page numbers [T-] or to Pre-Hearing transcript page numbers [P.H.T-].

4. James Warren Brown, M.D. graduated from Cornell University Medical College in 1961 Dr. Brown became Board Certified in Psychiatry in 1969. Dr. Brown has a current status of Associate (or Assistant) Attending Psychiatrist at the following hospitals: New York Hospital; Hospital for Special Surgery; St. Vincent's Hospital; and Manhattan Eye, Ear and Throat Hospital. He has maintained a general psychiatry private practice since 1965. Dr. Brown testified as an expert witness for Petitioner (Petitioner's Exhibit # 11); [T-48-113].

5. Dr. Brown did not perform an independent personal psychiatric evaluation, examination, or testing of Respondent [T-51-52]. Therefore, no independent diagnosis was presented by Dr. Brown [T-52].

6. Holly B. Rogers, M.D. graduated from the University of Texas Southwestern Medical Center in 1990. Dr. Rogers performed her residency in Psychiatry at Duke University Medical Center in North Carolina from 1990 through 1994, becoming chief resident in Psychiatry in 1993. Dr Rogers was licensed in North Carolina in 1994 and Board Certified in Adult Psychiatry in 1996. She is a staff Psychiatrist at Duke University. The Hearing Committee directed that Respondent (who had offered and consented) submit to a psychiatric examination pursuant to P.H.L. § 230(7). Dr. Rogers was chosen by Respondent as the person who would evaluate him. The Hearing Committee, Respondent and Petitioner all consented to Dr. Rogers designation. Dr. Rogers' evaluation is contained in Hearing Committee Exhibits # 1 & # 2 [T-135-136, 215-216].

7. Respondent was admitted to Silver Hill Hospital, Inc, a private psychiatric treatment center (**"Silver Hill"**), on October 19, 1995. Respondent signed himself out of Silver Hill, against medical advice (**"AMA"**), on October 26, 1995 (Petitioner's Exhibit # 14); (Petitioner's Exhibit # 5 at p. 36). Respondent admits that the night of his admission to Silver Hill, he was totally exhausted, mentally and physically, and knew that he needed rest [T-173-174].

8. In October 1995, Respondent was using Sudafed, Vitamin B12, and diet pills (amphetamines) in order to stay awake and testosterone shots, Prozac, Zoloft, Paxil, and Effexor to help him cope with the stresses of his life and his long working hours (Petitioner's Exhibit # 14); (Hearing Committee's Exhibit # 1). Respondent has admitted to taking at least, Sudafed, Vitamins, diet pills (such as Ionamin[5]), and some alcohol (Petitioner's Exhibits #8 & # 9, at p. 9).

9. Respondent's Silver Hill admission mental status included: (1) significant increase in quantity of speech; (2) poor concentration; (3) tangential, over inclusive and ruminative thought processes; (4) paranoid and suicidal ideation; and (5) grossly impaired judgment (Petitioner's Exhibit # 14); [T-149, 151].

10. The Silver Hill admission/discharge diagnoses presented in Dr. Eric Dieffenbach's report included: (1) Axis I - Other substance induced, psychotic disorder with delusions (DSM[6] # 292.11); (2) Polysubstance abuse (DSM # 305.40); and (3) Axis V admission GAF[7] of 20, discharge GAF of 50 with highest estimated GAF within the past year of 60 (Petitioner's Exhibits # 8 & # 14); [T-152].

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[5] Ionamin, an amphetamine type appetite suppression drug which is only available by prescription (Petitioner's Exhibit # 13).

[6] Diagnostic and Statistical Manual (DSM), a diagnostic manual used by the American Psychiatric Association [T-52-53].

[7] Global Assessment of Functioning (GAF), a scale that is used to assess a person's functioning or the degree of illness, with the lower numbers being the most impaired and the higher numbers being the least impaired [T-63].

11 As Dr. Brown testified, DSM # 292.11 signifies: "amphetamine induced psychotic disorder with delusions. Cannabis induced psychotic disorder with delusion. Cocaine induced psychotic disorder with delusion. Hallucinogen induced psychotic disorder with delusion. Inhalant induced psychotic disorder with delusion. Opiate induced psychotic disorder with delusion ... " [T-57-58].

12. Dr Brown further testified that DSM # 305.40 signifies: "Sedative, hypnotic, or enzyolytic abuse." [T-58-59].

13. A GAF of 70 or 80 is a reflection of someone who has little or no impairment [T-63].

14. A GAF of 20 is an indication of someone in some danger of hurting himself or others, without clear expectation of death, someone who is frequently violent with manic excitement, or occasionally fails to maintain minimal personal hygiene, or someone who has gross impairment of communication [T-63-64].

15. On November 6, 1995, Respondent met with Dr. Scott Cunningham, a psychiatrist in Rocky Mount, North Carolina. Dr. Cunningham's evaluation findings included: (1) non-stop talking; (2) erratic sleep; and (3) rule out "some form of bipolar disorder". Dr. Cunningham diagnosed Respondent as having a Depressive Disorder, not otherwise specified and recommended treatment with an antidepressant. Respondent had been taking "300 mg Lithium Carbonate for a couple of days" (Hearing Committee's Exhibit # 1).

16. Respondent has been prescribed Trilafon, an antipsychotic drug, by Silver Hill and an antidepressant by Dr. Cunningham. Respondent has refused both prescriptions (Hearing Committee's Exhibit # 1); (Petitioner's Exhibit # 8).

17. Respondent had a private practice in medicine, in Larchmont, New York, from 1988 until at least March 26, 1996 (Hearing Committee's Exhibit # 1); [T-200]. Respondent was practicing medicine the day he was admitted to Silver Hill [T-167-168]. Respondent went back to his family practice soon after his AMA discharge from Silver Hill (Petitioner's Exhibit # 9 at p. 9).

18. Respondent stopped his practice of medicine in the State of New York in March of 1996 [T-211-215].

19. Respondent presented a number of lengthy documents, printed in very large print, in all capital letters. These documents were alleged to be drafts of legal pleadings which would eventually be submitted to a North Carolina Federal Court. These documents were reviewed by Dr. Brown who indicated that they were suggestive of having been written by a person with a psychotic disorder (Petitioner's Exhibits # 5, 6, 8 & 9); (Hearing Committee's Exhibit # 1); [T-65-82].

20. These lengthy documents are disorganized and ramble without cohesion and at times without definitive purpose (Petitioner's Exhibits # 5, 6, 8 & 9); [T-79, 109-110].

21. Respondent has a tendency to ramble, be tangential, disorganized and overly inclusive (Petitioner's Exhibits # 5 through # 9); [T-140-216].

22. Disorganization and/or rambling can be symptoms of psychosis [T-71-73].

23. Dr. Rogers' diagnoses as presented in her October 24, 1996 report included: (1) Axis I - Polysubstance Abuse (DSM # 305.40); and (2) Axis II - Narcissistic Personality Disorder (DSM 301.81) (Hearing Committee's Exhibit # 2).

24. Narcissistic Personality Disorder ("**NPD**") is diagnosed when an individual demonstrates an impairment in interpersonal or occupational functioning characterized by a pervasive pattern of grandiosity, excessive need for admiration, and a lack of empathy for others. Individuals with NPD are particularly vulnerable to the stress of criticism or rejection. Respondent has demonstrated NPD, including the inability to cope in the face of a major rejection (Hearing Committee's Exhibits # 1 & # 2).

25. Respondent does not appear, at the present, to be suffering from a psychotic disorder (Hearing Committee's Exhibits # 1 & # 2); [T-140-216].

26. In a document prepared by Respondent, dated May 31, 1996, Respondent admits to enduring a "maximal infliction of mental distress." as early as the fall of 1993 (Petitioner's Exhibit # 5 at p.20).

27. In an undated letter, sent to a Dr. Griffin, received by the OPMC New Rochelle area office, Respondent states the following: "I may be crazy but I do not recall hurting anyone..." " So when I finally understood, through my drug rotted head of sawdust and broken mitochondria..." (Petitioner's Exhibit # 8 at pp. 1,2).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, of the July 16, 1996 Statement of Charges, contained in paragraph A are **SUSTAINED** (except concludes that the period of time is no later than October 19, 1995 to some date before the present, based on the evidence presented).

Based on the above and the complete Findings of Fact, the Hearing Committee concludes that the First and Second Specifications contained in the July 16, 1996 Statement of Charges are **SUSTAINED**.

The rationale for the Hearing Committee's conclusions is set forth below.

DISCUSSION

Respondent is charged with professional misconduct by reason of practicing the profession while being a substance abuser or by reason of having a psychiatric condition which impairs his ability to practice. Respondent is also charged with practicing the profession while being impaired.

The Hearing Committee used ordinary English usage and understanding for all terms, allegations and charges.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated each witness for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility.

Dr. James Brown, the State's expert, had no professional association with Respondent. Dr. Brown was considered to be knowledgeable in the area of psychiatry. No reason was advanced to show Dr. Brown to have any prejudice against Respondent. By his own testimony, Dr. Brown admitted that he could not give a diagnosis of Respondent since he did not have an opportunity to personally evaluate Respondent. Overall, the Hearing Committee found Dr. Brown to be credible, honest and forthright and accepted a number of his general opinions.

Obviously Respondent had the greatest amount of interest in the results of these proceedings. In sum, Respondent was honest and forthcoming about his experiences of the past year. In a number of instances Respondent spoke in hyperbole. A review of Respondent's testimony, both on direct and cross-examination, shows a person who was severely impaired for a particular period of time. Sometimes, Respondent rambled and went off on tangents during his responses. However, the majority of times, Respondent was lucid and coherent. It was Respondent's opportunity to explain as much as he could about a number of things and he was very inclusive in his responses.

Taking into consideration the above, some of Respondent's bias and rambling, the Hearing Committee found Respondent's testimony to be generally credible.

Using the above information and understanding, the Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct had constituted professional misconduct under the laws of New York State.

With the limitations indicated above, the Department of Health has met its burden of proof as to the First Specification and Second Specification of misconduct contained in the July 16, 1996 Statement of Charges.

The Hearing Committee votes to sustain the charges of misconduct against Respondent. Therefore Respondent is guilty of professional misconduct under the laws of the State of New York.

It is clear from the records of Silver Hill, Respondent's submissions to the Office of Professional Medical Conduct (Petitioner's Exhibits # 5, # 6, # 8 & # 9), and Respondent's own testimony that Respondent was under a great deal of personal stress and traumatic times in October of 1995. The Hearing Committee concludes that the record clearly shows that Respondent had a psychiatric condition, paranoia and/or psychotic disorder, in October of 1995. In addition, Respondent was abusing or dependent on certain drugs during that same time period. All of the substances taken by Respondent, to keep himself going physically under very trying times, were self prescribed and without any medical justification.

Respondent's mental or psychiatric condition in October, 1995 was significant enough that it impaired his ability to safely and competently practice medicine.

The Hearing Committee agrees with Dr. Brown that during the October 1995 time period, Respondent was in the midst of a severe disabling, emotional/psychiatric problem disorder that rendered him not competent at that time. The Hearing Committee agrees with Dr. Rogers that at the time of Dr. Lucas' admission in October of 1995, at Silver Hills, Dr. Lucas was clearly impaired, demonstrating erratic behavior and extremely poor judgment. The Hearing Committee also agrees with Dr. Rogers' further assessment that these behaviors persisted, at least to some degree, through the spring of 1996.

The Hearing Committee agrees with Dr. Rogers' assessment that:

> Currently, Dr. Lucas does not seem to be suffering from a psychotic disorder. On examination his thoughts were clear and coherent. He was grandiose but not to a psychotic degree. He continued to make claims about his wife that reflected the extreme bitterness he feels towards her, but these claims did not have a delusional quality to them.

The Hearing Committee also agrees with Dr. Rogers' opinion that Respondent:

> was severely impaired, possibly to a psychotic degree, through the fall of 1995 and spring of 1996. Dr. Lucas' personality disorder is the most likely explanation for his decompensation. Substance abuse may have played a role in his difficulties. He is now apparently recovering from this crisis. (last page of Dr. Rogers' 10/9/96 report - Hearing Committee's Exhibit # 1).

The charge of practicing the profession while being dependent on narcotics, barbiturates, amphetamines or other drug having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice medicine, within the meaning of §6530(8) is sustained.

Respondent has admitted to continuing his family practice immediately before his admission to Silver Hill in October 1995, as well as returning to his practice immediately after his AMA discharge from Silver Hill. Respondent continued his family practice until March 26, 1996. As discussed above, the Hearing Committee concludes that Respondent practiced the profession of medicine while he was impaired by a mental disability. Additionally, Respondent practiced medicine while impaired by certain drugs.

Therefore, the charge of practicing the profession while impaired by drugs or a mental disability, within the meaning of §6530(7) is sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines as follows:

Respondent's license to practice medicine in New York State should be SUSPENDED for three (3) years from the effective date of this Determination and Order but the SUSPENSION should be STAYED as long as Respondent complies with the terms of probation set forth herein. Respondent should be placed on probation in New York State for a period of three (3) years from the effective date of this Determination and Order. During the period of probation, Respondent should commence or continue therapy and drug screening. The psychiatrist, psychologist or therapist must be pre-approved by the Office of Professional Medical Conduct, ("**OPMC**"). Respondent must obtain a practice supervisor and Respondent must comply with the standard and special terms and conditions of probation contained in Appendix II.

The special terms of probation should include four (4) drug screenings per month for the first three (3) months; thereafter two (2) drug screenings per month for the next three months; and thereafter, at least one drug screenings per month for the next six (6) months. If all drug testing result in negative, the OPMC may request reasonable, occasional random screening for the next two years of Respondent's probation. If any of the drug testing is positive, OPMC may immediately proceed with a probation violation hearing.

Respondent's probation should be supervised by the New York State Department of Health, by the OPMC. If Respondent complies with the above probation and its terms, no other restriction need be placed on Respondent's practice of medicine.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Hearing Committee believes Respondent is capable of continuing to contribute to medicine. Therefore, the Hearing Committee determines that license revocation would be disproportionate, inappropriate and excessive in this case. The Hearing Committee views Respondent's drug use as a crutch used by Respondent to deal with his lengthy employment hours and emotional, unstable home life. Therefore, the Hearing Committee's major focus is Respondent's mental health and ability to cope.

The Hearing Committee is in accord with Dr. Rogers' conclusion that Dr. Lucas, did not recognize being or taking habit forming drugs and exhibited some questionable judgment. The Hearing Committee believes that Respondent is not presently displaying the marked impairment described in the October 1995 Silver Hill records.

Respondent has shown very little insight and awareness of his serious predicaments. He is presently in some denial and has shown, at times, poor judgment. For example, Respondent continues to deny being or having been psychiatrically ill. He has admitted some drug use, but has not admitted all of the drugs that are indicated in the records. He has told the Hearing Committee that he only ended up in Silver Hill because he thought he was going to some other hospital for a rest.

However, in his favor, Respondent has voluntarily ceased the practice of medicine and was co-operative with the Hearing Committee and the appointed/chosen evaluating psychiatrist. In that respect, Respondent exercised proper judgment.

Given the above, the Hearing Committee does not believe that censure and reprimand is sufficient to address Respondent's failure to have personal insight, or lack of admission of his difficulties. Since there was insufficient evidence regarding other areas of Respondent's practice, the Hearing Committee finds that limiting Respondent's practice is not an available penalty. Similarly, the imposition of monetary penalties is not indicated.

At the present time, the Hearing Committee believes that public service is not an appropriate sanction. Considering Respondent's past coping disabilities, partially brought on by long work hours, the least Respondent needs is additional work and responsibilities.

The Hearing Committee does not believe that re-training or attendance at CME seminars is appropriate because there was no evidence that Respondent lacked competence. The Hearing Committee does believe that a practice monitor would be beneficial because OPMC would be provided information regarding Respondent's physical and mental condition during patient contact. The monitor would also report on Respondent's daily/weekly behavior and conduct.

The Hearing Committee believes that a therapist would be beneficial in helping Respondent cope with his past and present life situation and work habits. A therapist would be in the best situation to evaluate and report Respondent's progress or lapses to OPMC.

The Hearing Committee found it difficult to arrive at an appropriate penalty under the law, but unanimously believes that the sanction imposed above and the conditions contained in the annexed terms of probation, is an appropriate balance between adequately safeguarding and protecting the public and sufficiently helping Respondent deal with his conduct and condition.

The Hearing Committee strongly believes and determines that Respondent had an acute episode of mental or psychiatric condition which needed to be addressed. Due to this episode, Respondent needs to be monitored. The Hearing Committee agrees with Dr. Rogers that given the degree of Respondent's past impairment and the range of use of drugs, it would be unwise for Respondent to return to the practice of medicine without some form of monitoring or supervision.

It is for that reason that the Hearing Committee believes a three (3) year period of Probation, together with the terms and conditions set forth above will help Respondent, as well as adequately safeguard and protect the public. The Hearing Committee believes that the sanctions set forth above will send a sufficiently sobering message to Respondent and will better benefit society than revocation or other penalty.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines the above to be the appropriate sanctions under the circumstances. The Hearing Committee unanimously concludes that the sanctions imposed strike the appropriate balance between the need to punish (or in this case help) Respondent, deter future misconduct and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications of professional misconduct contained in the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**; and

2. Respondent's license to practice medicine in New York State is **SUSPENDED for Three (3) years** from the effective date of this Determination and Order; and

3. Said **Three (3) year SUSPENSION is STAYED** as long as Respondent complies with the terms of probation; and

4. Respondent shall be on **PROBATION** in New York State for a period of **three (3) years** from the effective date of this Determination and Order; and

5. Respondent shall obtain a practice supervisor, as more fully set forth in the annexed terms of probation; and

6. Respondent shall obtain a therapy monitor, as more fully set forth in the annexed terms of probation; and

7. The complete terms of probation are attached to this Determination and Order in Appendix II and are incorporated herein and made a part of the Determination and Order; and

8. Respondent's probation shall be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct; and

9. In the event that Respondent leaves New York to practice outside the State, the above period of probation shall be tolled until Respondent returns to practice in New York State.

DATED: Albany, New York
December, 24 1996

Olive M. Jacob.

OLIVE M. JACOB (Chair),

ANDREW CONTI, M.D., and

RALPH LEVY, D.O.

To:

ROY NEMERSON, ESQ.
Deputy Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
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New York, New York 10001

GREENSPAN & GREENSPAN, ESQ.
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APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF CHARLES CLEMENT LUCAS, Jr., M.D.	STATEMENT OF CHARGES

CHARLES CLEMENT LUCAS, Jr., M.D., the Respondent, was authorized to practice medicine in New York State on or about October 16, 1981, by the issuance of license number 147930 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. During a period of time beginning on a date unknown to Petitioner, but no later than August 1, 1995, and continuing through the present, Respondent has suffered from a psychotic disorder and poly-substance abuse. Respondent's mental illness manifests itself in disorganized thought processes and paranoid ideation. Respondent, who has failed to comply with the adequate evaluation and treatment of said illness, is impaired thereby for the practice of medicine.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

BEING AN HABITUAL USER OR HAVING A PSYCHIATRIC CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8)(McKinney Supp. 1996) by being a habitual user of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines,

hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice medicine, as alleged in the facts of the following:

1. Paragraph A.

SECOND SPECIFICATION

PRACTICING WHILE IMPAIRED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6509(7)(McKinney Supp. 1996) by practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability as alleged in the facts of the following:

2. Paragraph A.

DATED: July 16, 1996
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

APPENDIX II

TERMS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct, (hereinafter "**OPMC**") Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. The probation periods shall be tolled until the Respondent returns to practice in New York State.

6. Respondent shall have quarterly meetings with an employee or designee of OPMC during the periods of probation. In these quarterly meetings, Respondent's professional performance may be reviewed by inspecting selections of office records, patient records and hospital charts.

7. Respondent shall submit semi-annual declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

8. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. Respondent shall maintain legible medical records which accurately reflect evaluation and treatment of patients. These records will contain, at least, a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment..

10. All expenses, including but not limited to those, of complying with these terms of probation and the Determination and Order, including drug screenings, retraining, monitoring, therapists and supervisors shall be the sole responsibility of the Respondent.

11. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

12. Respondent shall submit to at least the following: four (4) random drug screenings per month for the first three (3) months; thereafter two (2) random drug screenings per month for the next three months; and thereafter, at least one random drug screening per month for the next six (6) months. If all drug testing result in negative, the OPMC may request reasonable, occasional random drug screening during the next two years of Respondent's probation. If any of the drug testing is positive, OPMC may immediately proceed with a probation violation hearing.

13. Respondent shall commence or continue therapy. The psychiatrist, psychologist or therapist (hereinafter "Therapist") must be selected by Respondent with the approval of the OPMC. The Therapist shall have the following responsibilities:

(a) Therapy monitors who participate generally determine the frequency and length of therapy needed by the monitoree.

(b) The therapy monitor shall:

(i) Determine the therapy schedule.

(ii) Adjust the therapy schedule according to the monitoree's therapy needs.

(iii) Evaluate the monitoree's progress in recovery and report as appropriate to the OPMC.

(iv) Submit complete and accurate OPMC monitoring reports in a timely manner.

(v) Report to the OPMC any symptoms of a relapse or renewed impairment within 24 hours of becoming aware of such.

(vi) Communicate with the OPMC staff as appropriate.

(c) All monitors must be willing to communicate with the monitoree's practice and sobriety monitors should the need arise.

14. Respondent must select and obtain a practice supervisor with the approval of the OPMC. The practice supervisor shall have the following responsibilities:

(a) Practice supervisors who participate are responsible for providing the OPMC with information regarding the appropriateness of the monitoree's practice of medicine and to report on the physician's behaviors/conduct.

(b) The practice supervisor shall:

(i) Observe the monitoree's physical and mental condition frequently, preferably daily.

(ii) Observe time and attendance behavior and document any changes.

(iii) Observe any change in social behavior and document any change.

(iv) Observe monitoree's medical practice by reviewing charts, discussing case management and observing monitoree's interaction with patients.

(v) Submit complete and accurate monitoring reports to the OPMC in a timely manner.

(vi) Report any suspected impairment, change in behavior, questionable medical practice within 24 hours of becoming aware of such.

(vii) Communicate with the OPMC staff as appropriate.

(c) Preferably, the practice supervisor will have the same specialty as the monitoree and work at the same location.

(d) All monitors must be willing to communicate with the monitoree's therapy and sobriety monitors should the need arise.

15. The OPMC, at its option, may require Dr. Lucas to submit to a full evaluation by some professional of the OPMC's choice. This evaluation will be paid for by OPMC and may be done at reasonable frequency or as needed, at the discretion of the Director of the OPMC, or his/her designee.

16. Respondent shall remain drug free and stay abstinent of any non-prescribed by another physician psychoactive medication. Respondent can not prescribe his own medication.