



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

July 12, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Amy Merklen, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Leon J. Greenspan, Esq.
Greenspan & Greenspan
34 South Broadway
Suite 605
White Plains, New York 10601-4400

Charles C. Lucas, Jr., M.D.
2039 Palmer Avenue
Suite 103
Larchmont, New York 10538

Charles C. Lucas, Jr., M.D.
76 Khakum Wood Road
Cottage House
Greenwich, CT 06831

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

Dear Parties:

Enclosed please find the Determination and Order (No. 01-154) 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.

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.

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.

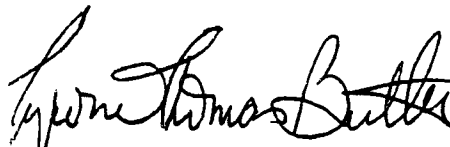
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
CHARLES C. LUCAS, JR., M.D.

DETERMINATION
AND
ORDER
BPMC # 01- 154

RALPH LUCARIELLO, M.D., Chairperson, **RALPH LEVY, D.O.** and **WILLIAM L. MAHER, ESQ.**, duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) and (19) of the Public Health Law. **JEFFREY ARMON, ESQ.**, served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Violation of Probation: February 7, 2001

Dates of Hearing: May 1, June 13, 2001

Department of Health appeared by: **DONALD P. BERENS, JR., ESQ.**
General Counsel, NYS Department of Health
BY: AMY MERKLEN, ESQ.
NYS Department of Health
Corning Tower, Room 2509
Albany, New York 12237

Representative for Respondent :

LEON J. GREENSPAN, ESQ.

Greenspan & Greenspan

34 South Broadway, Suite 605

White Plains, New York 10601-4400

Witnesses for the Department of Health:

Debra Hathoway

Annette Palk

Witness for the Respondent:

Charles C. Lucas, Jr., M.D. (Respondent)

Deliberations held:

June 13, 2001

NOTE: Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

Petitioner's Exhibits are designated by Numbers.

Respondent's exhibits are designated by Letters.

T = Transcript

A copy of the Notice of Violation of Probation (Ex. 3) is attached to this Determination and Order as Appendix II.

FINDINGS OF FACT

1. The Respondent was authorized 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. (Ex. 8)

2. By a Determination and Order of the New York State Board for Professional Medical Conduct dated December 24, 1996 (BPMC# 96-304), Respondent was found to have engaged in professional misconduct by being a habitual abuser of alcohol, or by being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects or having a psychiatric condition which impaired his ability to practice and by practicing the profession while impaired by alcohol, drugs, physical or mental disability. His New York medical license was suspended for a three year period and said suspension was stayed contingent on Respondent's compliance with certain terms of probation. (Ex. 1)

3. The terms of probation included requirements that Respondent submit to random drug screenings, obtain a practice supervisor and a therapy monitor, submit written notification to the Office of Professional Medical Conduct (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 and that he remain drug free and stay abstinent of any non-prescribed by another physician psychoactive medication. (Ex. 1, Appendix II)

4. On or about October 21, 1998, Respondent entered into a Consent Order with the North Carolina Medical Board by which his North Carolina license was suspended until December 24, 1999 with said suspension being stayed for so long as he complied with certain conditions. The basis for the action by the North Carolina Board was the December, 1996 Determination and Order issued by the New York State Board. (Ex. 7)

5. Respondent submitted an application for registration to the New York State Department of Education in 1999 on which he answered "no" to the question of whether any other state had instituted charges against him for "professional misconduct, unprofessional conduct, incompetence or negligence, or had revoked, suspended, or accepted surrender of a professional license" held by him. (Ex. 8)

6. On or about August 23, 1999, the Office of Professional Medical Conduct (OPMC) was informed by the Committee on Physician's Health (CPH) that Respondent had a urine result from a screening performed on August 7, 1999 that tested positive for morphine. (T. 39-41)

7. Respondent was contacted by a representative of the OPMC's Physician Monitoring Program on that same day and denied having used any unauthorized drug. He was directed to an independent chemical evaluation. (Ex. B)

8. On September 1, 1999, Respondent was evaluated at Four Winds in Katonah, New York. The report of the evaluation noted that Respondent attributed the positive urine test result to having taken ½ tablet of Tylenol with Codeine #2 on the night before the urine test to treat a migraine headache. The report also indicated that Respondent stated that he had obtained the medication from a dentist two years previously. (Ex. 4)

9. In a letter from the Director of the OPMC dated February 7, 2001, Respondent was informed that it had been determined that he had violated the terms of his probation imposed by BPMC Order #96-304. (Ex. 3)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that the Department established by a preponderance of the evidence that Respondent had violated the terms of his probation, as set out in BPMC #96-304. Specific terms violated were #4 (failure to provide written notification to OPMC of any disciplinary actions taken by any state agency, within 30 days of each action) and #16 (failure to remain drug-free and to stay abstinent of any non-prescribed by another physician psychoactive medication).

DISCUSSION

Respondent testified that the positive urine test result was caused by his having taken a Tylenol with codeine #2 tablet on the night preceding the test to treat a migraine headache. He stated that he had believed that the medication was aspirin and that it was in an unlabeled bottle that he had removed from his mother's medicine cabinet about two years previously. He was unaware that the medication may have been a controlled substance until after he was informed of the positive test result and thereafter disposed of the contents of the bottle by flushing it down a toilet. Respondent denied telling any person from either the CPH, OPMC or Four Winds that he had obtained the Tylenol with codeine from a dentist and also denied having stated that he had taken ½ of a tablet.

The Committee found this explanation to be implausible and concluded that Respondent was not a credible witness. His testimony was considered to be evasive and inconsistent. The contention that Respondent took medicine from an unlabeled bottle which he had in his possession for two years without first determining what the contents was viewed as incredible. His demeanor and contradictory answers caused the Committee to discount his testimony in its entirety as it related to the positive drug test result.

Respondent also testified that he did not recognize that the question on the New York registration application would have included the North Carolina disciplinary action, which was based on the original disciplinary action taken by the New York Board. The Committee determined that the failure to report the North Carolina action was a clear violation of Paragraph #4 of his terms of probation. However, the failure to make such report was seen as a mere technical violation because it was presumed that no further action would have been taken by the New York Board had Respondent properly reported the out-of-state disciplinary action.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York should continue to be suspended for an additional five year period, said suspension to continue to be stayed, and that Respondent should be placed on probation in accordance with the terms of probation set forth in Appendix I during the five year period. Included in the terms of probation are requirements that Respondent obtain a practice supervisor and therapy monitor and that he submit to random drug screenings during the period of probation.

There appeared to be some confusion as to whether the earlier three year period of probation had been completed. To eliminate any misunderstanding, the conditions imposed by this Determination and Order are intended to replace any and all terms of probation imposed by BPMC #96-304. In addition, the Committee determined that a censure and reprimand shall be issued for Respondent's failure to notify the OPMC of the North Carolina disciplinary action. This determination of penalty was reached upon due consideration for the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The 1996 Determination and Order found that Respondent had been a habitual user of alcohol or had been dependent on or a habitual user of certain controlled substances. He also was found to have practiced medicine while impaired. The terms of probation imposed were intended to address Respondent's impairment while protecting his patients from any potential dangers. Based on the personal observations of the Respondent made at this proceeding, the Committee members believed that the earlier concerns of the Board had not been fully addressed.

Respondent appeared to be in denial of his condition, yet provided some testimony of a history of substance abuse. There was a perception that he was not completely honest with his explanation of the positive drug test. There was also some testimony of a disagreement between OPMC and Respondent over his compliance with the drug screening requirements imposed by

the earlier Order. The Committee believed that the terms of probation, with a practice supervisor, therapy monitor and random drug testings, should be extended and that this decision was justified by Respondent's actions. It is also recommended that the OPMC make very clear (preferably in writing) the Respondent's responsibilities pursuant to this Determination and Order to reduce the chances of future disagreements. The Committee also wanted to make clear that this Determination and Order issued as a result of the finding of violations of probation is a professional disciplinary action that must be reported on future applications for licensure or hospital privileges in all jurisdictions.

ORDER

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

1. The Determination that the Respondent violated the terms of probation imposed by BPMC #96-304, as set forth the Department's letter dated February 7, 2001 (Ex. 3) is **SUSTAINED**; and
2. Respondent's license to practice medicine shall be **SUSPENDED** for a period of **FIVE YEARS**, said period of suspension to be **STAYED**, and Respondent shall be placed on **PROBATION** during the period of the stayed suspension of his license, and shall comply with all Terms of Probation as set forth in Appendix I, attached hereto and made a part of this Determination and Order; and
3. Respondent shall be issued a **CENSURE and REPRIMAND** for the failure to report the North Carolina disciplinary action; and
4. This Order shall be effective upon service on the Respondent or her attorney by personal service or by certified or registered mail.

DATED: Troy, New York

7/11/01, 2001



RALPH LUCARIELLO, M.D. Chairperson

**RALPH LEVY, D.O.
WILLIAM L. MAHER, ESQ.**

TO:

Amy B. Merklen, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2509
Empire State Plaza
Albany, New York 12237-0032

Leon J. Greenspan, Esq.
Greenspan & Greenspan
34 South Broadway, Suite 605
White Plains, New York 10601-4400

Charles C. Lucas, Jr., M.D.
2039 Palmer Avenue, Suite 103
Larchmont, New York 10538

APPENDIX I

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 and/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 a minimum, 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 four 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 Respondent to submit to a full evaluation by a 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 abstinent of any non-prescribed by another physician psychoactive medication. Respondent can not prescribe his own medication.

APPENDIX II



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

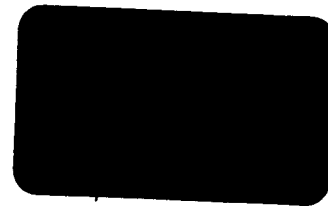
Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

February 7, 2001

Charles C. Lucas, Jr., M.D.
2039 Palmer Avenue
Suite 103
Larchmont, New York 10538



m evd

Charles C. Lucas, Jr., M.D.
76 Khakum Wood Road
Cottage House
Greenwich, CT 06831

Re: Notice of Violation of Probation
License No. 147930

Dear Dr. Lucas:

As the Director of the Office of Professional Medical Conduct of the New York State Department of Health, I have conducted an investigation and determined that you have violated the terms of probation imposed upon you by Order BPMC No. 96-304. My determination that you have violated the terms of your probation is based on the following:

1. By Order BPMC No. 96-304, the State Board for Professional Medical Conduct found you guilty of professional misconduct due to your psychiatric and drug impairment. Your license to practice medicine was suspended for three years, the suspension was stayed, and you were placed on probation for three years.
2. Term one (1) of probation required you to, "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." When applying for registration with the New York State Department of Education sometime after March 1, 1999, you provided false information. When answering question 2(b), "Has any other state or country instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence; or revoked, suspended, or accepted surrender of professional license held by you?", you answered "no". When in fact, you were fully aware of the disciplinary action taken by the North Carolina Medical Board on or about October 21, 1998 whereby you consented to surrendering your North Carolina medical license for two (2) years, said surrender to be to be stayed so long as you complied with various conditions.

Charles C. Lucas, Jr., M.D.
February 7, 2001
page 2

3. Term four (4) of probation required you to, "submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by an local, state or federal agency, institution or facility, with 30 days of each charge or action." On October 21, 1998, you entered into a disciplinary agreement with the North Carolina Medical Board. You failed to notify OPMC within thirty (30) days of said investigation, action or surrender.
4. Term sixteen (16) of probation required you to, "remain drug free and stay abstinent of any non-prescribed by another physician psychoactive medication." On August 7, 1999, you provided urine for screening which tested positive for morphine.

By this letter, I am initiating a violation of proceeding against you pursuant to New York Public Health Law 230(19).


Be advised that if you do not dispute the facts forming the basis of my determination within 20 days of the date of this letter, I shall submit this matter to a committee on professional conduct for its review and determination. If within 20 days of the date of this letter, you dispute in writing the facts forming the basis of my determination, you shall be afforded a hearing before a committee on professional conduct. You have the right to such a hearing and may be represented by counsel. If you dispute the facts of this letter and request a hearing, all contact and correspondence should be directed to Amy B. Merklen, Assistant Counsel, Division of Legal Affairs, Corning Tower Building, Room 2509, Empire State Plaza, Albany, New York, 12237-0032, (518) 473-4282.

A stenographic record of this hearing will be made. The committee, after providing you an opportunity to be heard, shall determine whether you have violated probation and, if so, shall impose an appropriate penalty as defined in New York State Public Health Law 230-a. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. This order may be reviewed by the Administrative Review Board of the State Board for Professional Medical Conduct.

Charles C. Lucas, Jr., M.D.
February 7, 2001
page 3

Since this violation of probation proceeding may result in a determination that your license to practice medicine in New York be revoked, I urge you to consult with an attorney.

Very truly yours,



Dennis J. Graziano
Director
Office of Professional Medical Conduct

cc: Greenspan & Greenspan, Esq.
34 South Broadway, Suite 605
White Plains, New York 10601-4400