

May 21, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Lucas, R.P.A.
c/o The Plastic Surgery Institute
71-949 Highway 111 – Suite 300
Rancho Mirage, California 92270

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Robert Lucas, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-101) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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., Chief 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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
ROBERT LUCAS, R.P.A.

DETERMINATION

AND

ORDER

BPMC #12-101

A hearing was held on April 18, 2012, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated January 12, 2012, were served upon the Respondent, Robert Lucas, R.P.A. Pursuant to Section 230(10)(e) of the Public Health Law, Michael R. Golding, M.D., Chairperson, Toni M. McLaurin, M.D., and Constance Diamond, D.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by Joel E. Abelow, Esq. of Counsel. The Respondent appeared pro se.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a) (iii), 6530(9)(b) and 6530(9)(d).

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner:

None

For the Respondent:

Robert Lucas, R.P.A.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Robert Lucas, R.P.A., the Respondent, was authorized to practice medicine as a physician assistant in New York State on January 1, 1985, by the issuance of license number 002637 by the New York State Education Department. (Petitioner's Ex. 3)

2. On March 2, 2009, in the Superior Court of California, County of Riverside, Respondent was found guilty, based on a plea of guilty, of Driving Under the influence of Alcohol, a misdemeanor. (Petitioner's Exs. 5 and 6)

3. On May 19, 2011, the Medical Board of California, Physician Assistant Committee, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), revoked Respondent's Physician Assistant's license, stayed the revocation and placed him on four (4) year's probation with terms and conditions, based on the criminal conviction set forth in Paragraph 2 above. (Petitioner's Ex. 5)

4. On December 20, 2011, Respondent entered into a Consent Order with the Connecticut Medical Examining Board regarding the State of Connecticut's disciplinary action taken in response to the California Decision. (Respondent's Ex. A)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law §6530 (9)(a)(iii) by being convicted of committing an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law.

VOTE: Paragraph A: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York State.

VOTE: Paragraphs A , B and/or C : Sustained (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken or having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of license, revocation of license and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York State.

VOTE: Paragraph A, B and/or C : Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Hearing Committee concludes that Respondent's conviction for driving under the influence and the subsequent discipline by the California Board would constitute misconduct under the laws of New York State.

At the Hearing, Respondent testified that he was convicted for driving under the influence on two occasions in 2008. Within nine months Respondent stated that he

voluntarily sought out sobriety through a 12 step fellowship. (T. 8) Respondent stated that he received several continuances from the California court so that he could focus on his recovery.(T. 9) Respondent further testified that the diversion group involves treatment, group therapy, a health support group, mandatory AA meetings and random testing. (T. 9, 25) Respondent maintains that he is four years sober today and that he remains subject to random testing. Respondent further requested that he be placed on a similar probation that he worked out with the State of Connecticut. Finally, he stated that Petitioner's request for an indefinite suspension is punitive in nature.

The Hearing Committee finds that Respondent was remorseful and demonstrated insight into his substance abuse problems. They also note that Respondent spoke the language of a person in recovery. The Hearing Committee would have preferred to have a written report from Respondent's counselor to support his assertions of recovery. The Hearing Committee however, concurs with Respondent that an indefinite suspension by New York State may create unnecessary difficulties for him and impede his progress.

The Hearing Committee believes that the public will be adequately protected if Respondent's New York license is placed on probation with terms coterminous with the time period and conditions of probation mandated by the Physician Assistant Committee of the Medical Board of California. These conditions include submission of quarterly reports from Respondent's supervising physician that indicate that Respondent is in an alcohol and substance free state. The complete terms of probation are attached to and made a part of this Determination and Order as Appendix II.

The Hearing Committee concludes that placing Respondent on probation that is coterminous with the California Board requirements is the appropriate penalty in this

instance. This determination was reached on due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent shall be placed on **PROBATION** for a period to run coterminous with the Stipulated Settlement between Respondent and the Physician Assistant Committee of the Medical Board of California dated May 19, 2011;
2. Respondent shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order;
3. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York
14 MAY, 2012

REDACTED

~~Michael R. Golding, M.D.~~
Michael R. Golding, M.D.
Chairperson

Toni M. McLaurin, M.D.
Constance Diamond, D.A.

TO:

Robert Lucas, R.P.A
c/o The Plastic Surgery Institute
71-949 Highway 111, Suite 300
Rancho Mirage, CA 92270

Joel E. Abelove Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, N.Y. 12237

APPENDIX I

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

ROBERT LUCAS, R.P.A.
CO-11-03-1148-A

NOTICE OF

REFERRAL

PROCEEDING

TO: Robert Lucas, R.P.A.
REDACTEDRobert Lucas, R.P.A.
The Plastic Surgery Institute, Andrew Ordon, M.D.
71-949 Highway 111, Suite 300
Rancho Mirage, CA 92270**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21st day of March, 2012, at 10:30 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here



The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

January 12, 2012

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Joel E. Ablove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
ROBERT LUCAS, R.P.A.
CO-11-03-1148-A

STATEMENT
OF
CHARGES

ROBERT LUCAS, R.P.A., Respondent, was authorized to practice medicine in New York state on January 1, 1985, by the issuance of license number 002637 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 2, 2009, in the Superior Court of California, County of Riverside, Respondent was found guilty, based on a plea of guilty, of Driving Under the Influence of Alcohol, a misdemeanor.

B. On or about May 19, 2011, the Medical Board of California, Physician Assistant Committee, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), inter alia, revoked Respondent's Physician's Assistant's license, stayed the revocation and placed him on four (4) years probation with terms and conditions, based on the criminal conviction set forth in Paragraph A above.

C. The conduct resulting in the California Board disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(9)(a)(i) (being convicted of committing an act constituting a crime under state law).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A, B, and/or C.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken or having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of license, revocation of license and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

3. The facts in Paragraphs A ,B, and/or C.

DATED: *January 12*, 2012
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

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 and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the **Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299**; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Determination and Order. Respondent shall personally meet with a person designated by the Director of OPMC if requested by the Director.
4. Respondent's New York license shall be placed on probation for a period of time **coterminous with the period of probation of Respondent's California license pursuant to the Stipulated Settlement and Disciplinary Order of the Physician Assistant Committee, Medical Board of California dated May 19, 2011 attached hereto and made a part of these terms of probation.**
5. Respondent shall provide the California Board with a copy of this Determination and Order within **ten (10) days** of its effective date. Respondent shall execute any and all necessary releases and/or requests for his probation monitor pursuant to the California Stipulated Settlement to submit quarterly reports to OPMC at the address set forth in Paragraph 2 above documenting Respondent's compliance with the terms of the California Stipulated Settlement.

6. Respondent shall provide immediate notice to OPMC in the event of any charges that Respondent violated any terms of the California Stipulated Settlement and/or in the event any further disciplinary action is taken against Respondent's California license. Any violation of the California Stipulated Settlement shall be deemed to be a violation of this Determination and Order.

7. Respondent shall provide immediate notice to OPMC in the event that he begins to practice as a physician assistant in New York state while he is on probation.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to this Determination and Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 1E-2009-198587

ROBERT J. LUCAS, P.A.

Physician Assistant
License No. PA 15947

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 17, 2011.

DATED May 19, 2011

PHYSICIAN ASSISTANT COMMITTEE

REDACTED

Steven Klompus, P.A., Chair

1 KAMAI A D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
Deputy Attorney General
4 State Bar No. 141135
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2083
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

9
10 **BEFORE THE**
THE PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:
13 **ROBERT J. LUCAS, P.A.**
14 REDACTED
15 **Physician Assistant License No. PA 15947**
16 Respondent.
17

Case No. 1E-2009-198587

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Elberta Portman (Complainant) is the Executive Officer of the Physician Assistant
23 Committee. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Samuel K.
25 Hammond, Deputy Attorney General.

26 2. Respondent ROBERT J. LUCAS, P.A. (Respondent), is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 ///

1 3. On or about September 13, 2001, the Physician Assistant Committee issued Physician
2 Assistant License No. PA 15947 to ROBERT J. LUCAS, P.A. (Respondent). The Physician
3 Assistant License was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 1E-2009-198587 and will expire on June 30, 2011, unless renewed.

5 JURISDICTION

6 4. On February 15, 2011, Accusation No. 1E-2009-198587 was filed before the
7 Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs,
8 State of California (Board), and is currently pending against Respondent. A true and correct copy
9 of the Accusation and all other statutorily required documents were properly served on
10 Respondent on February 15, 2011. Respondent timely filed his Notice of Defense contesting the
11 Accusation. A true and correct copy of Accusation No. 1E-2009-198587 is attached as Exhibit A
12 and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands the charges and allegations in
15 Accusation No. 1E-2009-198587. Respondent has also carefully read, and understands the effects
16 of this Stipulated Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

26 CULPABILITY

27 8. Respondent admits the complete truth and accuracy of each and every charge and
28 allegation in Accusation No. 1E-2009-198587, and agrees that he has thereby subjected his

1 Physician Assistant License Number PA 15947 to disciplinary action. Respondent agrees to be
2 bound by the Committee's imposition of discipline as set forth in the Disciplinary Order below.

3 CONTINGENCY

4 9. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
5 submitted to the Committee for its consideration in the above-entitled matter and, further, that the
6 Committee shall have a reasonable period of time in which to consider and act on this Stipulated
7 Settlement and Disciplinary Order after receiving it.

8 10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
9 and void and not binding upon the parties unless approved and adopted by the Committee, except
10 for this paragraph, which shall remain in full force and effect. Respondent fully understands and
11 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
12 Disciplinary Order, the Committee may receive oral and written communications from its staff
13 and/or the Attorney General's office. Communications pursuant to this paragraph shall not
14 disqualify the Committee, any member thereof, and/or any other person from future participation
15 in this or any other matter affecting or involving Respondent. In the event that the Committee, in
16 its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with
17 the exception of this paragraph, it shall not become effective, shall be of no evidentiary value
18 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
19 hereto. Respondent further agrees that should the Committee reject this Stipulated Settlement and
20 Disciplinary Order for any reason, Respondent will assert no claim that the Committee, or any
21 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
22 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

23 ADDITIONAL PROVISIONS

24 11. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
25 be an integrated writing representing the complete, final and exclusive embodiment of the
26 agreements of the parties in the above-entitled matter.

27 ///

28 ///

1 12. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary
2 Order, including facsimile signatures of the parties, may be used in lieu of original documents and
3 signatures and, further, that facsimile copies shall have the same force and effect as originals.

4 13. In consideration of the foregoing admissions and stipulations, the parties agree the
5 Committee may, without further notice to or opportunity to be heard by Respondent, issue and
6 enter the following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician Assistant License No. PA 15947 issued to
9 Respondent ROBERT J. BUEAS, P.A., is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for four (4) years from the effective date of this Decision and
11 Disciplinary Order on the following terms and conditions.

12 1. **DRUGS - ABSTAIN FROM USE/EXEMPTION FOR PERSONAL USE**

13 Respondent shall abstain completely from the personal use or possession of controlled
14 substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs
15 as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a
16 prescription.

17 Orders forbidding Respondent from personal use or possession of controlled substances or
18 dangerous drugs do not apply to medications lawfully prescribed to Respondent for a bona fide
19 illness or condition by another practitioner.

20 2. **ALCOHOL - ABSTAIN FROM USE** Respondent shall abstain completely from
21 the use of alcohol-containing products and beverages.

22 3. **BIOLOGICAL FLUID TESTING** Respondent shall immediately submit to
23 biological fluid testing upon the request of the Physician Assistant Committee or its designee.
24 The cost of biological fluid testing shall be borne by Respondent.

25 4. **DIVERSION PROGRAM** Within 30 days of the effective date of this decision,
26 Respondent shall enroll and participate in the Physician Assistant Committee's Diversion
27 Program until the Committee or its designee determines that further treatment and rehabilitation is
28 no longer necessary. Respondent shall participate in the program at his own expense. Quitting

15

1 the program without permission or being expelled for cause shall constitute a violation of
2 probation by Respondent.

3 5. APPROVAL OF SUPERVISING PHYSICIAN Within 30 days of the effective
4 date of this decision, Respondent shall submit to the Committee or its designee for its prior
5 approval, the name and license number of the supervising physician and a practice plan detailing
6 the nature and frequency of supervision to be provided. Respondent shall not practice until the
7 supervising physician and practice plan are approved by the Committee or its designee.

8 Respondent shall have the supervising physician submit quarterly reports to the Committee
9 or its designee.

10 If the supervising physician resigns or is no longer available, Respondent shall, within 15
11 days, submit the name and license number of a new supervising physician for approval.

12 6. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN

13 Respondent shall notify his current and any subsequent employer and supervising physician(s) of
14 his discipline and provide a copy of the Stipulation, Decision, and Order to each such employer
15 and supervising physician(s) during his period of probation, at the onset of that employment.
16 Respondent shall ensure that each employer informs the Physician Assistant Committee, or its
17 agent, in writing within thirty (30) days, verifying that the employer and supervising physician(s)
18 have been informed of this Stipulation and Order.

19 7. FILE MONTHLY PROBATION REPORTS Respondent shall submit monthly
20 declarations under penalty of perjury on forms provided by the Committee or its designee, stating
21 whether there has been compliance with all the conditions of probation.

22 8. OBEY ALL LAWS Respondent shall obey all federal, state, and local laws, and
23 all rules governing the practice of medicine as a physician assistant in California, and remain in
24 full compliance with any court ordered criminal probation, payments, and other orders.

25 9. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
26 penalty of perjury on forms provided by the Committee or its designee, stating whether there has
27 been compliance with all the conditions of probation.

28 ///

16

1 10. OTHER PROBATION REQUIREMENT Respondent shall comply with the
2 Committee's probation unit. Respondent shall, at all times, keep the Committee informed of his
3 addresses of business and residence which shall both serve as addresses of record. Changes of
4 such addresses shall be immediately communicated in writing to the Committee. Under no
5 circumstances shall a post office box serve as an address of record, except as allowed by
6 California Code of Regulations 1399.523.

7 Respondent shall appear in person for an initial probation interview with Committee or its
8 designee within 90 days of the decision. Respondent shall attend the initial interview at a time
9 and place determined by the Committee or its designee.

10 Respondent shall, at all times, maintain a current and renewed physician assistant license.
11 Respondent shall also immediately inform probation unit, in writing, of any travel to any areas
12 outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30)
13 days.

14 11. INTERVIEW WITH MEDICAL CONSULTANT Respondent shall appear in
15 person for interviews with the Committee's medical or expert physician assistant consultant upon
16 request at various intervals and with reasonable notice.

17 12. RESIDING FOR OUT-OF-STATE PRACTICE OF RESIDENCE The period of
18 probation shall not run during the time Respondent is residing or practicing outside the
19 jurisdiction of California. If, during the probation Respondent moves outside the jurisdiction of
20 California to reside or to practice elsewhere, including federal facilities, Respondent shall
21 immediately notify the Committee in writing of the date of departure and date of return, if any.

22 Respondent's license shall be automatically cancelled if Respondent's period of temporary
23 or permanent residence or practice outside California totals two years. Respondent's license shall
24 not be cancelled as long as Respondent is residing and practicing as a physician assistant in
25 another state of the United States and is on active probation with the physician assistant licensing
26 authority of that state, in which case the two year period shall begin on the date probation is
27 completed or terminated in that state.

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1 13. FAILURE TO PRACTICE AS A PHYSICIAN ASSISTANT
2 CALIFORNIA RESIDENT

3 In the event Respondent resides in the State of California and for any reason Respondent
4 stops practicing medicine in California, Respondent shall notify the Committee or its designee in
5 writing within 30 calendar days prior to the dates of non-practice and return to practice. Any
6 period of non-practice within California, as defined in this condition, will not apply to the
7 reduction of the probationary term and does not relieve Respondent of the responsibility to
8 comply with the terms and conditions of probation. Non-practice is defined as any period of time
9 exceeding 30 calendar days in which Respondent is not practicing as a physician assistant.

10 All time spent in a clinical training program that has been approved by the Committee or its
11 designee shall be considered time spent in the practice of medicine. For purposes of this
12 condition, non-practice due to a Committee ordered suspension or in compliance with any other
13 condition of probation, shall not be considered a period of non-practice.

14 Respondent's license shall be automatically cancelled if, for a total of two years,
15 Respondent resides in California and fails to practice as a physician assistant.

16 14. UNANNOUNCED CLINICAL SITE VISIT At least once per calendar year, or
17 more frequently as determined by the Committee or its designee, unannounced clinical site visits
18 shall be made by the Committee or its designee to ensure that Respondent is complying with all
19 terms and conditions of probation.

20 15. COMPLETION OF PROBATION Upon successful completion of probation as
21 determined by the Committee's executive officer, Respondent's license will be fully restored.

22 16. VIOLATION OF PROBATION If Respondent violates probation in any respect,
23 the Committee, after giving Respondent notice and the opportunity to be heard, may revoke
24 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
25 revoke probation is filed against Respondent during probation, the Committee shall have
26 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
27 the matter is final.

28 ///

1 17. COST RECOVERY Respondent is hereby ordered to reimburse the Physician
2 Assistant Committee the amount of \$5,000.00 for its costs of investigation and prosecution.
3 Payment of the cost recovery amount may be made based on an installment plan approved by the
4 Committee provided the entire amount is paid within thirty-six (36) months of the effective date
5 of this decision. Failure to reimburse the Committee's costs for its investigation and prosecution
6 within the specified period shall constitute violation of the probation order. The filing of
7 bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse
8 the Committee for its costs.

9 18. ~~PROBATION MONITORING COSTS~~ VOLUNTARY LICENSE SURRENDER Following the effective date of this
10 probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise
11 unable to satisfy the terms and conditions of probation, Respondent may voluntarily tender his
12 license to the Committee. The Committee reserves the right to evaluate the Respondent's request
13 and to exercise its discretion whether to grant the request, or to take any other action deemed
14 appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered
15 license, Respondent will no longer be subject to the terms and conditions of probation.

16 19. PROBATION MONITORING COSTS Respondent shall pay the costs associated
17 with probation monitoring each and every year of probation, as designated by the Board which
18 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
19 California and delivered to the Board or its designee no later than January 31 of each calendar
20 year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician Assistant License No. PA 15947. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

Dated

4/6/11



ROBERT J. LUCAS, P.A.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Stipulated Settlement and Disciplinary Order. I approve its form and content.

Dated:

4/11/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General



SAMUEL K. HAMMOND
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1E-2009-198587

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 15 2011
B) REDACTED ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
Deputy Attorney General
4 State Bar No. 141135
110 West "A" Street, Suite 1100
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P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2083
7 Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 1E-2009-198587

13 ROBERT J. LUCAS, P.A.

REDACTED

ACCUSATION

15 Physician Assistant Certificate
No. PA 15947

Respondent.

20 Complainant alleges:

PARTIES

- 22 1. Elberta Portman (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Physician Assistant Committee.
- 24 2. On or about September 13, 2001, the Physician Assistant Committee, Medical Board
25 of California, Department of Consumer Affairs, State of California (Committee) issued Physician
26 Assistant License Number PA 15947 to ROBERT J. LUCAS, P.A. (Respondent). The Physician
27 Assistant License was in full force and effect at all times relevant to the charges brought herein
28 and will expire on May 31, 2011, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Committee under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 3527, subdivision (a), of the Code, states that a licensee who is found guilty
6 of unprofessional conduct¹ which includes violation of any provision of the Physician Assistant
7 Practice Act and violation of any provision of the Medical Practice Act (Code section 2000, et
8 seq.), may have his license revoked, suspended or placed on probation and required to pay costs
9 of probation monitoring.

10 5. Section 2234 of the Code states, in pertinent part:

11 "The Division of Medical Quality² shall take action against any licensee who is
12 charged with unprofessional conduct. In addition to other provisions of this article,
13 unprofessional conduct includes, but is not limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
15 the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the
16 Medical Practice Act].

17 "(b) Gross negligence.

18 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent
19 acts or omissions. An initial negligent act or omission followed by a separate and distinct
20 departure from the applicable standard of care shall constitute repeated negligent acts.

21
22 ¹ Unprofessional conduct under Business and Professions Code section 2234 is conduct
23 which breaches the rules or ethical code of the medical profession, or conduct which is
24 unbecoming to a member in good standing of the medical profession, and which demonstrates an
25 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d. 564,
26 575.)

27 ² California Business and Professions Code section 2002, as amended and effective
28 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in
the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical
Board of California," and references to the "Division of Medical Quality" and "Division of
Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 "(1) An initial negligent diagnosis followed by an act or omission medically
2 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

3 "(2) When the standard of care requires a change in the diagnosis, act, or omission
4 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
5 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs
6 from the applicable standard of care, each departure constitutes a separate and distinct
7 breach of the standard of care.

8 "(d) Incompetence.

9 "(e) The commission of any act involving dishonesty or corruption which is
10 substantially related to the qualifications, functions, or duties of a physician and surgeon.

11 "(f) Any action or conduct which would have warranted the denial of a certificate.

12 "..."

13 6. Section 2236 of the Code states:

14 "(a) The conviction of any offense substantially related to the qualifications,
15 functions, or duties of a physician and surgeon constitutes unprofessional conduct within
16 the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of
17 conviction shall be conclusive evidence only of the fact that the conviction occurred.

18 "(b) The district attorney, city attorney, or other prosecuting agency shall notify the
19 Division of Medical Quality of the pendency of an action against a licensee charging a
20 felony or misdemeanor immediately upon obtaining information that the defendant is a
21 licensee. The notice shall identify the licensee and describe the crimes charged and the
22 facts alleged. The prosecuting agency shall also notify the clerk of the court in which the
23 action is pending that the defendant is a licensee, and the clerk shall record prominently in
24 the file that the defendant holds a license as a physician and surgeon.

25 7. Section 2239 of the Code states:

26 "(a) The use or prescribing for or administering to himself or herself, of any
27 controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or
28 of alcoholic beverages, to the extent, or in such manner as to be dangerous or injurious to

1 the licensee, or to any other person or to the public, or to the extent that such impairs the
2 ability of the licensee to practice medicine safely or more than one misdemeanor or any
3 felony involving the use, consumption, or self administration of any of the substances
4 referred to in this section, or any combination thereof, constitutes unprofessional conduct.
5 The record of conviction is conclusive evidence of such unprofessional conduct.

6 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this section. The Division of Medical
8 Quality may order discipline of the licensee in accordance with Section 2227 or the
9 Division of Licensing may order the denial of the license when the time for appeal has
10 elapsed or the judgment of conviction has been affirmed on appeal or when an order
11 granting probation is made suspending imposition of sentence, irrespective of a subsequent
12 order under the provisions of Section 1203.4 of the Penal Code allowing such person to
13 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
14 verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

15 8. Section 480 of the Code states:

16 "(a) A board may deny a license regulated by this code on the grounds that the
17 applicant has one of the following:

18 "(1) Been convicted of a crime. A conviction within the meaning of this section
19 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
20 Any action that a board is permitted to take following the establishment of a conviction
21 may be taken when the time for appeal has elapsed, or the judgment of conviction has been
22 affirmed on appeal, or when an order granting probation is made suspending the imposition
23 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
24 Penal Code.

25 "..."

26 9. Section 125.3 of the Code states, in part, that any Board within the Department of
27 Consumer Affairs may request the administrative law judge to direct any licentiate found to have

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1 committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the
2 reasonable costs of the investigation and enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Conviction of Crimes Substantially Related to the Practice of a Physician Assistant)

5 10. Respondent Robert J. Lucas is subject to disciplinary action under sections 3527 and
6 2234, as defined by 2236, of the Code, in that respondent has been convicted of crimes
7 substantially related to the qualifications, functions, and duties of a physician assistant. The
8 circumstances are as follows:

9 A. On or about March 2, 2009, in the Superior Court of California, County of
10 Riverside, in the case of *People v. Robert James Lucas*, Case No. INM190216, respondent
11 was convicted, on his plea of guilty, of one count of operating an automobile with a blood
12 alcohol content of 0.08% or more in violation of Vehicle Code section 23152, subdivision
13 (b). Respondent also admitted a prior conviction of driving an automobile with a blood
14 alcohol of 0.08% or more in violation of Vehicle Code section 23152, subdivision (b).³

15 B. As a consequence of the conviction, respondent was sentenced to five (5) years
16 summary probation, was ordered to serve 20 days in custody, to attend and complete an
17 alcohol abuse training program and to pay \$1998.40 in fines, among other things.

18 C. On or about March 2, 2009, in the Superior Court of California, County of
19 Riverside, in the case of *People v. Robert James Lucas*, Case No. INM189767, respondent
20 was convicted, on his plea of guilty, of one count of operating an automobile with a blood
21 alcohol content of 0.08% or more in violation of Vehicle Code section 23152, subdivision
22 (b).

23 D. As a consequence of the conviction, respondent was sentenced to three (3)
24 years summary probation; was ordered to serve one (1) day in custody and to pay fines.
25 However, the summary probation and all conditions were ordered to run concurrently with
26 the summary probation and conditions in Case No. INM190216.

27 ³ Respondent was convicted of this prior offense also on March 2, 2009. See paragraph
28 9(C), below.

1. E. The circumstances leading to the convictions are as follows: On or about
2. June 2, 2008, at approximately 2:00 p.m., respondent was arrested by a Riverside County
3. Deputy Sheriff for driving while under the influence of alcohol. On or about June 24, 2008,
4. respondent was again arrested by a California Highway Patrol Officer for driving under the
5. influence of alcohol.

6. F On or about July 30, 2008, based on the June 2, 2008 arrest, the District
7. Attorney for the County of Riverside filed a criminal complaint [Case No. INM189767]
8. against respondent charging him with (among other things) driving while under the
9. influence of alcohol in violation of Vehicle Code section 23152, subdivision (a); [Count 1];
10. and operating an automobile with a blood alcohol content of 0.08% or more in violation of
11. Vehicle Code section 23152, subdivision (b) [Count 2].

12. On or about August 7, 2008, based on the June 24, 2008 arrest, the District
13. Attorney for the County of Riverside filed a criminal complaint [Case No. INM190216]
14. against respondent charging him with driving while under the influence of alcohol in
15. violation of Vehicle Code section 23152, subdivision (a); [Count 1]; and operating an
16. automobile with a blood alcohol content of 0.08% or more in violation of Vehicle Code
17. section 23152, subdivision (b) [Count 2].

18. G. The sentencing on the admitted criminal violations in Case Nos. INM189767
19. and INM190216 occurred on or about March 2, 2009. After the imposition of sentence in
20. Case No. INM189767, the District Attorney orally amended the criminal complaint in Case
21. No. INM190216, and added the conviction in Case No. INM189767 as a "prior
22. conviction," pursuant to the provisions of Vehicle Code section 23578. By order of the
23. Superior Court Judge, the summary probation and all conditions imposed in Case No.
24. INM189767 were made to run concurrently with the summary probation and conditions in
25. Case No. INM190216.

26. ///

27. ///

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unlawful Use of Alcohol)

3 11. Respondent is further subject to disciplinary action under sections 3527 and 2234, as
4 defined by section 2239, of the Code, in that he used alcohol to the extent, or in such manner, as
5 to be dangerous or injurious to himself, to another person, or the public, as more particularly
6 alleged in paragraph 10, above, which is hereby incorporated by reference as if fully set forth
7 herein.

8 THIRD CAUSE FOR DISCIPLINE

9 (Conduct That Would Warrant Denial of a Certificate)

10 12. Respondent is further subject to disciplinary action under section 2234 of the Code as
11 defined by sections 2234, subdivision (f), and 480, subdivision (a)(1), of the Code, in that he
12 suffered two (2) convictions for driving an automobile with a blood alcohol content of 0.08% or
13 more, as more particularly alleged in paragraph 10, above, which is hereby incorporated by
14 reference as if fully set forth herein.

15 FOURTH CAUSE FOR DISCIPLINE

16 (General Unprofessional Conduct)

17 13. Respondent is further subject to disciplinary action under sections 3527 and 2234 of
18 the Code in that he engaged in conduct which breaches the rules or ethical code of the medical
19 profession, or conduct which is unbecoming to a member in good standing of the medical
20 profession, and which demonstrates an unfitness to practice medicine, as more particularly
21 alleged in paragraph 10, above, which is hereby incorporated by reference as if fully set forth
22 herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Committee issue a decision:

1. Revoking or suspending Physician Assistant License Number PA 15947, issued to ROBERT J. LUCAS, P.A.
2. Ordering ROBERT J. LUCAS, P.A., to pay the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: February 15, 2011

REDACTED

ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
State of California
Complainant

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