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

11 In the Matter of the Accusation Against:

Case No. 1E-2008-194283

12 **MICHELLE BOUCHER, P.A.**
13 **29341 Las Cruces**
Laguna Niguel, CA 92677
14 **Physician Assistant License No. 15464**

FIRST AMENDED ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Elberta Portman (Complainant) brings this First Amended Accusation solely in her
20 official capacity as the Executive Officer of the Physician Assistant Committee, Department of
21 Consumer Affairs.

22 2. On or about September 22, 2000, the Physician Assistant Committee issued Physician
23 Assistant License Number 15464 to Michelle Boucher (Respondent).

24 **JURISDICTION**

25 3. This First Amended Accusation is brought before the Physician Assistant Committee
26 (Committee) of the Medical Board of California, Department of Consumer Affairs, under the
27 authority of the following laws. All section references are to the Business and Professions Code
28 (Code) unless otherwise indicated.

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2 4. Section 3527 of the Code states:

3 "(a) The committee may order the denial of an application for, or the issuance subject to
4 terms and conditions of, or the suspension or revocation of, or the imposition of probationary
5 conditions upon a physician assistant license after a hearing as required in Section 3528 for
6 unprofessional conduct which includes, but is not limited to, a violation of this chapter, a
7 violation of the Medical Practice Act, or a violation of the regulations adopted by the committee
8 or the board.

9 5. Section 2234 of the Code states:

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

13 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter. . . .

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

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

18 6. Section 3528 of the Code states:

19 "Any proceedings involving the denial, suspension or revocation of the application for
20 licensure or the license of a physician assistant, the application for approval or the approval of a
21 supervising physician, or the application for approval or the approval of an approved program
22 under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section
23 11500) of Part 1 of Division 3 of Title 2 of the Government Code."

24 7. Section 3531 of the Code states:

25 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
26 charge of a felony or of any offense which is substantially related to the qualifications, functions,
27 or duties of the business or profession to which the license was issued is deemed to be a
28 conviction within the meaning of this chapter. The committee may order the license suspended or

1 revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment
2 of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
4 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
5 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
6 or indictment."

7 8. California Code of Regulations, title 16, section 1399.520, states:

8 "No person shall practice as a physician assistant in this state unless he or she is a trainee,
9 has been granted interim approval or is licensed to practice as a physician assistant by the
10 committee."

11 9. California Code of Regulations, title 16, section 1399.521 states:

12 "In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the
13 committee may deny, issue subject to terms and conditions, suspend, revoke or place on probation
14 a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act
15 which would constitute unprofessional conduct for a physician and surgeon. . . ."

16 10. California Code of Regulations, title 16, section 1399.525, states:

17 "For the purposes of the denial, suspension or revocation of a license or approval pursuant
18 to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to
19 be substantially related to the qualifications, functions or duties of a person holding a license or
20 approval under the Physician Assistant Practice Act if to a substantial degree it evidences present
21 or potential unfitness of a person holding such a license or approval to perform the functions
22 authorized by the license or approval in a manner consistent with the public health, safety or
23 welfare. Such crimes or acts shall include, but are not limited to, the following:

24 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of, or conspiring to violate any provision or term of the Medical Practice Act.

26 "(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of, or conspiring to violate any provision or term of the Physician Assistant Practice
28 Act. . . .

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2 "(e) Any crime or act involving the sale, gift, administration, or furnishing of narcotics or
3 dangerous drugs or dangerous devices, as defined in section 4022 of the code.

4 11. Business and Professions Code section 4022 states:

5 " 'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
6 humans or animals, and includes the following:

7 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
8 prescription,' 'Rx only,' or words of similar import.

9 "(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale
10 by or on the order of a , ' 'Rx only,' or words of similar import, the blank to be filled in with the
11 designation of the practitioner licensed to use or order use of the device."

12 12. Business and Professions Code section 125.3 states:

13 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
14 proceeding before any board within the department or before the Osteopathic Medical Board
15 upon request of the entity bringing the proceedings, the administrative law judge may direct a
16 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
17 to exceed the reasonable costs of the investigation and enforcement of the case.

18 "(b). . . .

19 "(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
20 are not available, signed by the entity bringing the proceeding or its designated representative
21 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.
22 The costs shall include the amount of investigative and enforcement costs up to the date of the
23 hearing, including, but not limited to, charges imposed by the Attorney General.

24 "(d) The administrative law judge shall make a proposed finding of the amount of
25 reasonable costs of investigation and prosecution of the case when requested pursuant to
26 subdivision (a). The finding of the administrative law judge with regard to costs shall not be
27 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost
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1 award, or remand to the administrative law judge if the proposed decision fails to make a finding
2 on costs requested pursuant to subdivision (a).

3 "(e) If an order for recovery of costs is made and timely payment is not made as directed in
4 the board's decision, the board may enforce the order for repayment in any appropriate court.
5 This right of enforcement shall be in addition to any other rights the board may have as to any
6 licentiate to pay costs.

7 "(f) In any action for recovery of costs, proof of the board's decision shall be conclusive
8 proof of the validity of the order of payment and the terms for payment.

9 "(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the
10 license of any licentiate who has failed to pay all of the costs ordered under this section.

11 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
12 reinstate for a maximum of one year the license of any licentiate who demonstrates financial
13 hardship and who enters into a formal agreement with the board to reimburse the board within
14 that one-year period for the unpaid costs.

15 "(h) All costs recovered under this section shall be considered a reimbursement for costs
16 incurred and shall be deposited in the fund of the board recovering the costs to be available upon
17 appropriation by the Legislature.

18 "(i) Nothing in this section shall preclude a board from including the recovery of the costs
19 of investigation and enforcement of a case in any stipulated settlement.

20 "(j) This section does not apply to any board if a specific statutory provision in that board's
21 licensing act provides for recovery of costs in an administrative disciplinary proceeding."

22 13. Section 493 of the Code states:

23 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 14. Section 2238 of the Code states:

7 "A violation of any federal statute or federal regulation or any of the statutes or regulations
8 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
9 conduct."

10 15. Section 2239 of the Code states:

11 "(a) The use or prescribing for or administering to himself or herself, of any controlled
12 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
13 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
14 any other person or to the public, or to the extent that such use impairs the ability of the licensee
15 to practice medicine safely or more than one misdemeanor or any felony involving the use,
16 consumption, or self-administration of any of the substances referred to in this Section, or any
17 combination thereof, constitutes unprofessional conduct. The record of the conviction is
18 conclusive evidence of such unprofessional conduct.

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

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2 16. Section 4324, subdivision (a), of the Code states:

3 “(a) Every person who signs the name of another, or of a fictitious person, or falsely
4 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription
5 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
6 in the state prison, or by imprisonment in the county jail for not more than one year.”

7 17. Section 11173, subdivision (a), of the Health and Safety Code states:

8 “No person shall obtain or attempt to obtain controlled substances, or procure or attempt to
9 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
10 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

11 18. Section 11350, subdivision (a), of the Health and Safety Code states:

12 “Except as otherwise provided in this division, every person who possesses (1) any
13 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
14 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
15 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
16 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
17 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
18 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

19 19. Section 820 of the Code states:

20 Whenever it appears that any person holding a license, certificate or permit under this
21 division or under any initiative act referred to in this division may be unable to practice his or her
22 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
23 physical illness affecting competency, the licensing agency may order the licentiate to be
24 examined by one or more physicians and surgeons or psychologists designated by the agency.
25 The report of the examiners shall be made available to the licentiate and may be received as direct
26 evidence in proceedings conducted pursuant to Section 822.”

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20. Section 822 of the Code states:

“If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

“(a) Revoking the licentiate's certificate or license.

“(b) Suspending the licentiate's right to practice.

“(c) Placing the licentiate on probation.

“(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

“The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.”

FIRST CAUSE FOR DISCIPLINE

(Abuse of Drugs)

21. Respondent is subject to disciplinary action under sections 2239 of the Code in that she used controlled substances and/or dangerous drugs in such a manner as to be dangerous to herself and/or to the public and/or to the extent such use impaired her ability to practice medicine safely. The circumstances are as follows:

22. In 2006, Respondent fractured her left wrist and underwent five surgeries to repair it. During the same time, she suffered nerve damage to her right wrist from a dog attack. Because of these injuries, she was in severe pain. To treat her pain from these injuries she received legitimate prescriptions for pain medications from two physicians.

23. Respondent's mother became terminally ill in 2006. Respondent was her mother's primary caregiver. Respondent's mother died in 2007, and Respondent became extremely depressed because of her death.

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2 24. In addition to the above events, Respondent was involved in a “whistleblower”
3 incident at her workplace. These three factors contributed to Respondent’s abuse of various
4 medications.

5 25. In order to obtain the medications she was abusing, Respondent asked her friend
6 M.P.,¹ who was a certified nurse/midwife, to help her by writing fraudulent prescriptions for the
7 medications classified as controlled substances under the law. These prescriptions were illegal
8 because Respondent was not M.P.’s patient. Between March 2007 and July 2008, Respondent
9 submitted and filled approximately ninety-five (95) prescriptions written by M.P. for these
10 controlled substances.

11 26. In addition to obtaining illegal prescriptions for medication as outlined above,
12 Respondent also dishonestly obtained excess prescriptions by seeing each of her doctors within
13 several days to obtain prescriptions from each for the drugs she was abusing. Because of the
14 manner in which she arranged her appointments, she was able to illegitimately obtain forty-six
15 (46) prescriptions over approximately an eighteen (18) month period from her physicians.

16 27. On September 16, 2008, the Los Angeles County District Attorney filed a six count
17 felony Complaint, case number SA068912, against Respondent and M.P. The Complaint charged
18 Respondent with six (6) violations of Code section 4324, subdivision (a), Possession of Drugs
19 Obtained by Forged Prescription, and six violations of Health and Safety Code section 11173,
20 subdivision (a), Obtaining Controlled Substances by Fraud. The Complaint was filed as a result
21 of Respondent’s activities as detailed above in paragraphs 20 to 23.

22 28. On November 14, 2008, Respondent pled guilty to and was convicted of a violation
23 of Health and Safety Code section 11350, subdivision (a), Possession of Controlled Substance, as
24 a felony. The remaining counts were dismissed in the interests of justice. On January 21, 2009,
25 the court placed Respondent on three (3) years formal probation.

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27 _____
28 ¹ To protect privacy initials will be used in lieu of full names

1 29. On April 13, 2010, Respondent signed an agreement to undergo a voluntary mental
2 examination to determine whether her ability to practice medicine safely is impaired due to a
3 mental illness affecting her competency.

4 30. On June 24, 2010, Respondent underwent the mental status examination with Anne
5 C. Welty, M.D. The examination included Respondent speaking with Dr. Welty and giving her
6 pertinent background history and undergoing a series of standardized psychological tests.

7 31. After Dr. Welty's interview with Respondent and review of the standardized
8 psychological test results, Dr. Welty prepared her summary of same and her recommendations
9 with regard to Respondent's mental status and ability to safely practice medicine.

10 32. In relevant part, Dr. Welty diagnosed Respondent as suffering Opiate Abuse, in early
11 remission, and Alcohol Abuse, in early remission.

12 33. With regard to the question of whether Respondent's ability to conduct the solo
13 practice of medicine was impaired, Dr. Welty opined, "Without appropriate safeguards such as
14 random drug testing, close sponsorship and supervision regarding her opiate abuse and alcohol
15 abuse, and regular attendance of [sic] A.A. and N.A. meetings, Ms. Boucher's ability to conduct
16 her practice of medicine **most likely would be impaired**. Ms. Boucher needs regular and
17 thorough diversionary safeguards such as practice monitoring, limited access to scheduled
18 prescriptions, random drug testing, and frequent and consistent follow-up." (Emphasis added)

19 34. With regard to the question of whether Respondent posed a danger to herself or
20 others, Dr. Welty opined in part, "Ms. Boucher does not pose an imminent threat to herself or
21 others but will need closely structures ongoing support and safeguards to ensure her continued
22 success."

23 35. With regard to the question of whether Respondent requires psychotherapy in order to
24 practice medicine safely, Dr. Welty opined, "As stated above, Ms. Boucher needs through,
25 consistent, and professional safeguards to ensure her continued sobriety. This would include
26 random drug screening, mandated attendance at A.A. and N.A. meetings specifically geared for
27 health professionals, a mentor or sponsor, a practice monitor, limited access to scheduled
28 prescriptions or medications, and frequent and regular follow-up. In addition, Ms. Boucher

1 would benefit from regular psychotherapy on a weekly basis for six months to help her continue
2 to appropriately process the grief associated with her mother's death."

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Conviction)**

5 36. Respondent is subject to disciplinary action under section 493 and 3531 of the Code
6 in that Respondent sustained a conviction to a charge of a felony which is substantially related to
7 the qualifications, functions, or duties of the business or profession for which her license was
8 issued. The circumstances are as follows:

9 37. The facts and circumstances set forth in paragraphs 20 through 26 are incorporated
10 herein as if fully set forth.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Dishonest Conduct)**

13 38. Respondent is subject to disciplinary action under section 3527, subdivision (a), and
14 2234, subdivision (e), of the Code in that Respondent engaged in acts of dishonesty or corruption
15 which were substantially related to the qualifications, functions or duty of a physician assistant.
16 The circumstances are as follows:

17 39. The facts and circumstances set forth in paragraphs 20 through 26 are incorporated
18 herein as if fully set forth.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violation of Drug Laws)**

21 40. Respondent is subject to disciplinary action under section 2238 in that she violated
22 federal and state statutes and/or regulations regulating dangerous drugs and/or controlled
23 substances, to wit, section 4324 of the Code, and sections 11350, subdivision (a), and 11173,
24 subdivision (a), of the Health and Safety Code. The circumstances are as follows:

25 41. The facts and circumstances set forth in paragraphs 20 through 26 are incorporated
26 herein as if fully set forth.

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3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Unable to Practice Safely Practice Medicine Due to Impairment)**

5 42. Respondent is subject to disciplinary action under section 822 of the Code in that her
6 ability to practice medicine safely is impaired because she suffers from a mental illness affecting
7 her competency. The circumstances are as follows:

8 43. The facts and circumstances set forth in paragraphs 29 through 35 are incorporated
9 herein if fully set forth.

10 **PRAYER**

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

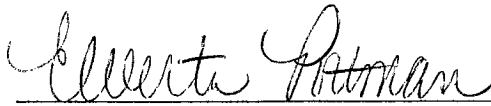
13 1. Revoking or suspending Physician Assistant License No. 15464, issued to Michelle
14 Boucher;

15 2. Ordering Michelle Boucher to pay the Physician Assistant Committee the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3;

18 3. Ordering Michelle Boucher, if placed on probation, to pay the Committee the costs of
19 probation monitoring.

20 4. Taking such other and further action as deemed necessary and proper.

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23 DATED: July 15, 2010



ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
Department of Consumer Affairs
State of California
Complainant

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