

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

91CVF-11-9349

BOGOMIR J. GLAVAN, M.D., :
Appellant, : CASE NO. 91CVF-11-9349
vs. : JUDGE NODINE MILLER
STATE MEDICAL BOARD OF OHIO, :
Appellee. :

JUDGMENT ENTRY

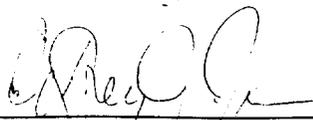
This matter is before the Court upon the appeal, pursuant to R.C. 119.12, of the November 13, 1991 order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court rendered December 30, 1994, and filed January 3, 1995, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, State Medical Board of Ohio, and the November 13, 1991 order of the State Medical Board, suspending Appellant's license to practice medicine but staying the suspension with probationary conditions, is hereby AFFIRMED. Costs to Appellant.

DATE

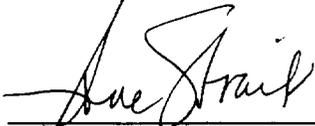
JUDGE NODINE MILLER

APPROVED:



JEFFREY J. JURCA (0012107)
Lane, Alton & Horst
175 South Third Street
Columbus, Ohio 43215-5100
(614) 228-6885

Counsel for Appellant



ANNE B. STRAIT (0012256)
Assistant Attorney General
Health & Human Services Section
30 East Broad Street, 26th Fl.
Columbus, Ohio 43215-3428
(614) 466-8600

Counsel for Appellee

glavan.ent

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

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Health & Human
Services Section

BOGOMIR J. GLAVAN, M.D.]

Appellant,]

vs.]

STATE MEDICAL BOARD OF OHIO,]

Appellee.]

CASE NO. 91CVF-11-9349

JUDGE GUY L. REECE, III

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OHIO
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DECISION

Rendered this 30 day of Dec, 1994.

REECE, J.,

This case is before the Court on administrative appeal from the November 13, 1991 Order of the State Medical Board, suspending the Appellant's license to practice medicine but staying the suspension with probationary conditions. The probationary conditions were designed to monitor, over a five year period, an admitted drug abuse problem of the Appellant, Dr. Glavan, who is an anesthesiologist.

The Board adopted the recommendation of the Hearing Examiner that Dr. Glavan be placed on probation for violation of ORC 4731.22(B) (26), to wit:

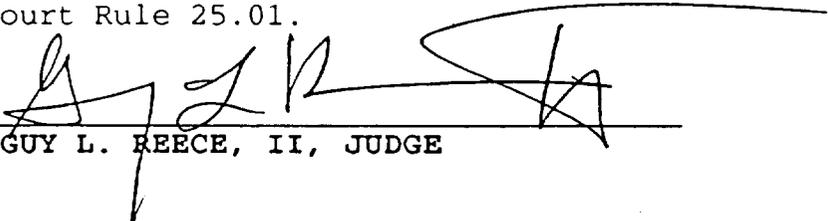
Dr. Glavan's admitted abuse of Schedule II opioid analgesic for a three-month period in 1990 constitutes "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as contemplated under the controlling statute, Section 4731.22(B) (26), Revised Code. Dr. Glavan argued that past impairment is not the focus of the disciplinary rule. Although Dr. Glavan also argues that there is no evidence of impairment after March, 1990, the Hearing Examiner characterizes the evidence as illustrating no obvious symptoms of impairment. "Impairment" connotes more than a conspicuous patent problem and a finding of "impairment of ability to practice" may be properly premised solely upon past conduct. There can be no good faith dispute as to the

potentially deleterious effect of inappropriate drug use by a practicing medical doctor. (Emphasis added.)

This Court concurs with the above interpretation that "impairment" may be based upon past conduct if coupled with expert opinion of existing, though latent, addiction. The testimony of Dr. McMamara, an addiction medicine specialist, furnished that expert opinion and further provides reliable probative and substantial evidence to support the Board's Order.

The record shows that Appellant was accorded due process and that the Recommendation of the Hearing Examiner and the Order of the Board was, in large measure, properly based upon the opinion of its expert witness, Dr. McMamara.

The Order of the Board is **AFFIRMED**. Appellee's counsel may prepare an entry pursuant to Court Rule 25.01.



GUY L. REECE, II, JUDGE

Appearances:

Jeffrey J. Jurca, Esq.
William Scott Lavelle, Esq.
Counsel for Appellant

Ann Strait, AAG.
Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO
91 NOV 20 PM 12:17

BOGOMIR J. GLAVAN, M.D.,
10440 Grant Lane
Pickerington, Ohio 43147,

91 CVF 11-9349

Appellant,

v.

Case No.

STATE MEDICAL BOARD OF OHIO,
77 South High Street, 17th Floor
Columbus, Ohio 43266-0315,

Appellee.

FILED
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FRANKLIN CO., OHIO
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JENNIFER L. ENRIGHT
CLERK OF COURTS

NOTICE OF APPEAL

Pursuant to R.C. 119.12, Bogomir J. Glavan, M.D. hereby gives notice of his appeal from the Order of the State Medical Board of Ohio, dated November 15, 1991, a copy of which is attached hereto and incorporated herein.

As grounds for this appeal, Dr. Glavan asserts that the Board's Order is not supported by reliable, probative and substantial evidence, and is not in accordance with law.

Respectfully submitted,

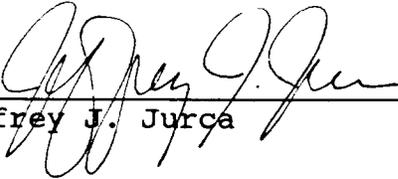
LANE, ALTON & HORST



Jeffrey J. Jurca (JUR02) (0012107)
175 South Third Street
Columbus, Ohio 43215
(614) 228-6885
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing has been served upon John C. Dowling, Ohio Attorney General, 15th Floor, 30 East Broad Street, Columbus, Ohio 43215, by regular U.S. mail, postage prepaid, this 19th day of November, 1991.



Jeffrey J. Jurca



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

November 15, 1991

Bogomir J. Glavan, M.D.
10440 Grant Lane
Pickerington Ohio 43147

Dear Doctor Glavan:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on November 13, 1991, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 055 325 344
RETURN RECEIPT REQUESTED

cc: Jeffrey J. Jurca, Esq.

CERTIFIED MAIL NO. P 055 325 345
RETURN RECEIPT REQUESTED

Mailed 11/15/91



STATE MEDICAL BOARD OF OHIO

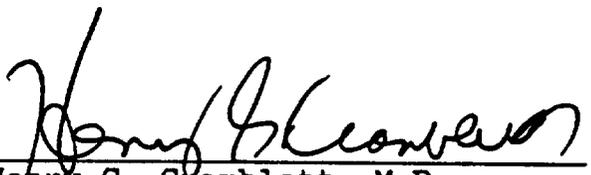
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on November 13, 1991, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Bogomir J. Glavan, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

11/15/91

Date



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

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Bogomir J. Glavan, M.D.

- d. In the event that Dr. Glavan should leave Ohio for three (3) consecutive months, or reside or practice outside the state, he must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of the probationary period, unless otherwise determined by a motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- e. Dr. Glavan shall abstain completely from the personal use or possession of drugs, except for those prescribed, administered, or dispensed to him by another so authorized by law, who has full knowledge of Dr. Glavan's history of substance abuse.
- f. Dr. Glavan shall submit blood or urine specimens for analysis without prior notice at such times as the Board may demand.
- g. Dr. Glavan shall continue counseling with Dr. James Gebhart or with a therapist approved by the Board, at such intervals as are deemed appropriate by the counselor or therapist but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved therapist. Dr. Glavan shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
- h. Dr. Glavan shall have a monitoring physician approved by the Board, who shall monitor him and provide the Board with reports on his progress and status. Dr. Glavan shall ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Glavan must immediately so notify the Board in writing and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable. In lieu of this requirement, Dr. Glavan may arrange for the Physician Effectiveness Committee at Grant Medical Center to provide quarterly reports to the State Medical Board in place of an individual monitoring physician.



STATE MEDICAL BOARD OF OHIO

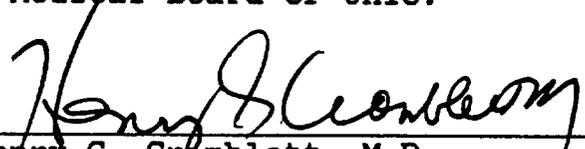
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

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Bogomir J. Glavan, M.D.

1. Should Dr. Glavan obtain or apply for privileges at a hospital other than Grant Medical Center, he must provide a copy of this Order to the Chief of Staff at the hospital where he is seeking privileges. Furthermore, if Dr. Glavan changes employment, he must provide a copy of this Order to his new employer.
2. If Dr. Glavan violates this probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the Stay Order and impose the indefinite suspension of his certificate.
3. Upon successful completion of the five (5) years probationary period, or as otherwise approved by the Board, Dr. Glavan's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Henry G. Cramblett, M.D.
Secretary

(SEAL)

11/15/91

Date

STATE MEDICAL BOARD
OF OHIO

91 OCT 11 AM 9:06 REPORT AND RECOMMENDATION
IN THE MATTER OF BOGOMIR J. GLAVAN, M.D.

The Matter of Bogomir J. Glavan, M.D., came on for hearing before me, Kevin P. Byers, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 3 and 4, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated May 8, 1991, mailed May 9, 1991 (State's Exhibit #1), the State Medical Board notified Bogomir J. Glavan, M.D., that it intended to determine whether to limit, revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation for the following reasons:

From January 1990 through March 1990, Dr. Glavan sublingually self-administered Alfentanil, a Schedule II controlled substance, two to four times per week including times when he was on anesthesiology call. In April of 1990, Dr. Glavan entered the Metro Atlanta Recovery Residence, Inc. (MARR) program for treatment of his chemical addiction. On or about June 26, 1990 Dr. Glavan aborted his treatment in Atlanta against staff advice and returned to Ohio. Dr. Glavan was subsequently ordered by the State Medical Board of Ohio to undergo an examination by Patrick McNamara, M.D., Addiction Medicine Specialist in Toledo, Ohio. Dr. McNamara examined Dr. Glavan on January 14, 1991 and formulated a diagnosis of opiate abuse.

The State Medical Board of Ohio alleged that the foregoing acts, conduct and/or omissions constituted "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Revised Code.

- B. By letter dated June 3, 1991 and received by the Medical Board on that date (State's Exhibit #2), Dr. Glavan requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General by John C. Dowling, Assistant Attorney General
- B. On behalf of the Respondent: Lane, Alton & Horst, by Jeffrey J. Jurca, Esq.

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III. Testimony Heard

A. Presented by the State

1. Bogomir J. Glavan, M.D., as on cross-examination
2. Michael A. Cohen, M.D.
3. Patrick K. McNamara, M.D.

B. Presented by Respondent

1. James Gebhart, Ph.D.
2. Daniel H. Huston, J.D.
3. James S. McCaughan, M.D.
4. Rita A. Glavan, M.A.
5. Bogomir J. Glavan, M.D.

IV. Exhibits Examined

In addition to those noted previously, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: June 3, 1991 letter to Dr. Glavan from the State Medical Board advising that a hearing set for June 17, 1991 was postponed until further notice pursuant to Section 119.09, Revised Code.
2. State's Exhibit #4: June 6, 1991 letter to Dr. Glavan from the State Medical Board scheduling his hearing for July 31, 1991.
3. State's Exhibit #5: July 5, 1991 Entry of the Hearing Examiner granting Respondent's Motion for Continuance, leave to depose witnesses in lieu of live testimony and sealing Dr. McNamara's seven-page assessment of Dr. Glavan.
4. State's Exhibit #6: August 23, 1991 Entry of the Hearing Examiner partially granting the State's August 13, 1991 Motion to Quash Subpoenas.
5. State's Exhibit #11: December 13, 1990 letter to Dr. Glavan from the State Medical Board directing him to submit to an examination by Dr. McNamara in Toledo, Ohio on January 14, 1991.

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6. State's Exhibit #12: Dr. McNamara's seven-page assessment submitted to the State Medical Board on February 6, 1991.
7. State's Exhibit #13: Curriculum vitae of Patrick Kelley McNamara, M.D.
8. State's Exhibit #14: Undated copy of the Physician Desk Reference relative to Alfenta.
9. State's Exhibit #15: An 11-page excerpt from the Diagnostic and Statistical Manual of Mental Disorders, 3rd Ed., Revised, regarding psychoactive substance use disorders.
10. State's Exhibit #16: June 12, 1991 Entry of the Hearing Examiner granting Respondent's motion for a pre-hearing conference and scheduling it for July 2, 1991.
11. State's Exhibit #17: August 29, 1991 Entry of the Hearing Examiner granting Respondent's August 29, 1991 request for an additional subpoena.
12. State's Exhibit #18: September 12, 1991 appearance of counsel for the State.
13. State's Exhibit #19: Respondent's June 7, 1991 Request for Disclosure of Witnesses and Documents.
14. State's Exhibit #20: Respondent's June 7, 1991 Motion for Pre-hearing Conference.
15. State's Exhibit #21: Respondent's June 27, 1991 Motion for Continuance.
16. State's Exhibit #22: The State's June 27, 1991 Request for List of Witnesses and Documents.
17. State's Exhibit #23: Respondent's August 7, 1991 Request for Issuance of Subpoenas.
18. State's Exhibit #24: The State's August 13, 1991 Motion to Quash Issuance of Subpoenas.
19. State's Exhibit #25: The State's August 19, 1991 Request for Issuance of Subpoenas.
20. State's Exhibit #26: Respondent's August 19, 1991 Memorandum in Opposition to Motion to Quash Issuance of Subpoenas.
21. State's Exhibit #27: The State's August 20, 1991 Supplemental Motion to Quash Subpoenas.

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22. State's Exhibit #28: Respondent's August 20, 1991 Second Request for Subpoena Issuance.
23. State's Exhibit #29: Respondent's August 22, 1991 Memorandum Contra to the State's Supplemental Motion to Quash.
24. State's Exhibit #30: Respondent's August 29, 1991 Motion for Leave to Request Additional Subpoena.
25. State's Exhibit #31: July 26, 1990 six-page letter to Ransome Williams, M.D., from James E. Gebhart, Ph.D., relative to Dr. Glavan.
- * 26. State's Exhibit #32: December 21, 1990 two-page letter to Henry G. Cramblett, M.D., Secretary of the State Medical Board from Dr. Glavan's counsel with two one-page attachments.

B. Presented by Respondent

1. Respondent's Exhibit A: June 3, 1991 Intrahospital Communication from Dr. Paul Addressi, Chairman of Anesthesia, and Dr. Michael Cohen, Director, Department of Anesthesia, to Dr. Phil Hawley, President, Medical Staff, Grant Medical Center.
2. Respondent's Exhibit B: Two-page contract dated July 1, 1991 between Patrick K. McNamara, M.D., and the State Medical Board.
3. Respondent's Exhibit C: June 26, 1990 document signed by Dr. and Mrs. Glavan directing MARR to forward Dr. Glavan's medical records to James Gebhart, Ph.D., to facilitate transfer of care.
4. Respondent's Exhibit D: July 30, 1990 two-page letter from Rita A. Glavan to Investigator C. J. Hunter of the State Medical Board.
5. Respondent's Exhibit F: May 1, 1991 two-page letter to Enforcement Coordinator Huston of the State Medical Board from Dr. Glavan's counsel declining the opportunity to participate in an office conference on May 2, 1991.
6. Respondent's Exhibit G: January 15, 1991 letter to Attorney Jurca from Enforcement Coordinator Huston.
7. Respondent's Exhibit H: July 8, 1990 letter to MARR from Dr. Glavan requesting the immediate transfer of his medical records to Dr. Gebhart.

8. Respondent's Exhibit I: September 11, 1987 two-page letter to Douglas Brush, Director MARR/South, Atlanta, Georgia, from Attorney Jurca demanding the release of Dr. Glavan's medical file to Dr. Gebhart.
9. Respondent's Exhibit J: Two-page excerpt of Section 290ee-3, Title 42, United States Code, "Confidentiality of Patient Records."
10. Respondent's Exhibit K: Three-page copy of Sections 84-6318 and 84-9987 of the Georgia Revised Code indicating that the wrongful release of a drug treatment record is a criminal misdemeanor in that state.

- * State's Exhibit #32 sealed upon the State's Motion.
(State's Exhibits #7-#10 and Respondent's Exhibit E not offered).

V. Other Matters

Upon joint motion of counsel, the record in this Matter was held open until September 30, 1991, to allow simultaneous filing of written closing arguments. The filings were duly received and are made a part of the record. On October 3, Respondent requested leave to file a response to the State's written closing. Leave is GRANTED, over the State's objection, and the memorandum of October 3, 1991 and the State's objection of October 7, 1991, are made a part of the record. Additionally, the Hearing Examiner has substituted copies for the original State's Exhibit #32 and Respondent's Exhibit G due to yellow highlighting on the originals. Respondent's Exhibits D and H are also highlighted minimally, although no prejudice is apparent and substitution is unnecessary.

FINDINGS OF FACT

1. Bogomir J. Glavan, M.D., received his Ohio license to practice medicine and surgery in 1973 and has practiced exclusively in Columbus except for a residency in the Cleveland area around 1984. Dr. Glavan practiced emergency medicine for approximately ten years following his first residency and then returned to the study of medicine by enrolling and completing an anesthesiology residency. At the conclusion of this residency, Dr. Glavan returned to Columbus and resumed his practice at Grant Medical Center.

These facts are established by the testimony of Dr. Glavan (Tr. at I: 34, II: 35-38, 79-81, 103-104).

2. In March 1990, associates of Dr. Glavan's at Grant Medical Center observed changes in his personality and were suspicious of possible drug abuse by Dr. Glavan. A personal meeting was held with Dr. Glavan and Drs. Addessi and Cohen queried Dr. Glavan regarding potential substance abuse. Dr. Glavan admitted that he had been self-administering Alfentanil, a Schedule II opioid analgesic,

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sublingually from January 1990 through March 1990. He was encouraged by Drs. Addressi and Cohen to obtain treatment for his inappropriate Alfentanil use. Dr. Glavan readily agreed and promptly arranged to enter an inpatient program, Metro Atlanta Recovery Residences, Inc. (MARR) on April 9, 1990. Dr. Cohen specifically recommended the MARR program because he went through a related program in Smyrna, Georgia, around 1980 due to his own Demerol abuse. Dr. Addressi was apparently involved in the March 1990, conversation with Dr. Glavan by virtue of his position as Chairman of the Department of Anesthesiology at Grant Medical Center. Dr. Glavan underwent no preliminary outpatient evaluation locally or in Georgia to determine the propriety of inpatient treatment. He simply relied upon Dr. Cohen's wholehearted endorsement of MARR as sufficient evidence of the program's validity and value.

These facts are established by the testimony of Dr. Cohen (Tr. at I: 53-70), the testimony of Dr. Glavan (Tr. at I: 35-45, 49-51, II: 38-41, 86), the testimony of Dr. McNamara (Tr. at I: 125-126), the testimony of Dr. Gebhart (Tr. at I: 157-159, 164-165, 171-172) and the testimony of Rita Glavan (Tr. at II: 6-9).

3. Dr. Glavan was accompanied by his wife during his admission to MARR and they were both assured that his treatment there would be confidential and that MARR was not required to report about his treatment to any governmental agency or regulatory body. A prevalent concern of the Glavans was that he be treated in an environment of absolute confidentiality.

These facts are established by the testimony of Dr. Glavan (Tr. at I: 49-51, II: 42-48, 75-76) and the testimony of Mrs. Glavan (Tr. at II: 9-11, 31).

4. Dr. Glavan experienced a number of philosophical and theoretical conflicts with the program, although he was determined to complete the program and leave MARR as he originally anticipated in late June, 1990. However, as his expected discharge date drew nearer, Dr. Glavan was unable to obtain firm commitments from the MARR treatment team regarding his discharge date. Following investigation by Mrs. Glavan and a treatment arrangement with James Gebhart, Ph.D., Mrs. Glavan appeared unannounced in June, 1990 and removed her husband from the MARR program. At this time Dr. and Mrs. Glavan submitted a "Transfer of Care" form to MARR which was recommended by their attorney. This form authorized MARR's transfer of Dr. Glavan's records to Dr. Gebhart to ensure continuity of treatment. After Dr. Glavan left the program, MARR officials authored a letter to the State Medical Board advising that he had terminated treatment with their program and implied that it was against medical advice or contrary to the best interests of Dr. Glavan's therapy.

These facts are established by the testimony of Dr. Glavan (Tr. at I: 43-45, II: 47-57, 90-92, 100-101), the testimony of Mrs. Glavan (Tr. at II: 12-24) and Respondent's Exhibit C.

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5. Upon his return to Columbus, Dr. Glavan began therapeutic treatment with Dr. Gebhart and continues this treatment at present. After the Board became aware of Dr. Glavan's 1990 substance abuse, he was directed to report to an Addiction Medicine Specialist, Patrick K. McNamara, M.D., in Toledo, Ohio, for an evaluation as authorized by the Medical Practices Act. Dr. Glavan reported as instructed and was accompanied by his wife and Dr. Gebhart. Dr. Gebhart admitted that it was very unusual for him to accompany a patient to an independent medical evaluation. He accompanied Dr. Glavan because he felt that the circumstances merited his utmost attention and assistance. Both Dr. Gebhart and Dr. Glavan were individually interviewed by Dr. McNamara in the course of his evaluation of Dr. Glavan's admitted substance abuse. Dr. Gebhart went to Toledo in the course of the psychologist-patient relationship and billed Dr. Glavan for his time for the Toledo trip and interview.

These facts are established by the testimony of Dr. Glavan (Tr. at I: 47-49, II: 68), the testimony of Dr. Gebhart (Tr. at I: 158-183), the testimony of Dr. McNamara (Tr. at I: 123-127), State's Exhibit #12, and Respondent's Exhibits C, H, and I.

6. Dr. McNamara determined, via Dr. Glavan's admission, that he abused Alfentanil from January 1990 through March 1990, technically at times while he was on anesthesiology call since he is on 24 hour call at certain times of each month. Dr. McNamara diagnosed Dr. Glavan as suffering from "Opioid Abuse," 305.50, DSM III-R. Dr. McNamara testified that he did not have an adequate pool of historical facts and treatment records upon which to evaluate Dr. Glavan's potential opioid dependence under the diagnostic criteria. Thus, Dr. Glavan's Alfentanil self-administration was classified by Dr. McNamara as "abuse" rather than "dependence."

These facts are established by the testimony of Dr. McNamara (Tr. at I: 109, 120, 129-134, 137-140) and State's Exhibit #15.

7. Dr. McNamara testified that it was his opinion that Dr. Glavan was impaired from the period of January through March of 1990. He further opined that, at the time of his assessment in January of 1991, he found "no evidence to demonstrate any lack of competence based on any factor at this time." He also felt that Dr. Glavan exhibited little insight into his prior substance abuse and did not seem to have adequate support systems to assist him in maintaining abstinence. Dr. McNamara noted that "with appropriate therapy and monitoring of abstinence, Dr. Glavan would be 'medically clear' to return to medical practice." He testified that, primarily due to the absence of prior treatment records, he could not make an informed evaluation of Dr. Glavan's impairment, or lack thereof, in January of 1991. He furthermore believed that Dr. Glavan was involved with a number of caregivers and that an optimal plan would have them all functioning under the umbrella

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of one overseer. However, Dr. McNamara does question the appropriateness of the initial admission of Dr. Glavan to the long-term residential regimen at MARR. Specifically, Dr. McNamara testified that he continued to believe that "[t]here is no documentation or substantiation for this patient having required the need for long-term residential care and this referral may not have been an appropriate recommendation." He stressed the importance of individualizing Dr. Glavan's treatment as much as possible "particularly considering how terribly unusual this case is."

These facts are established by the testimony of Dr. McNamara (Tr. at I: 107-109, 128) and State's Exhibit #12.

8. James Gebhart, Ph.D., is Dr. Glavan's treating psychologist. Dr. Gebhart has been licensed in the State of Ohio since 1984 and has a fulltime general psychological practice. He initially became involved with the Glavans in April of 1990 when Mrs. Glavan made an appointment with him to discuss her concerns regarding Dr. Glavan's treatment at MARR. Eventually, Dr. Gebhart recommended to Mrs. Glavan that she obtain Dr. Glavan's release from MARR and transfer his care to Dr. Gebhart. Dr. Gebhart is of the opinion that Dr. Glavan's enrollment in an inpatient facility following sporadic and short-term substance abuse was a mistake and was actually contraindicated under the circumstances evident. Dr. Gebhart is not a supporter of the 12-step recovery theory and believes that Dr. Glavan's unfortunate exposure to the 12-step theory, through the fundamentalist techniques employed at MARR, has effectively precluded Dr. Glavan from embracing this theory as an adjunct to treatment of his substance abuse. Dr. Gebhart admitted that he has never recommended to any of his patients that they undertake a 12-step program and, while he acknowledges the value of the 12-step theory for certain individuals, he classifies the ones most likely to receive benefit from this theory as "the truly diseased." In treating Dr. Glavan, Dr. Gebhart has consulted with other psychologists and medical doctors to test the validity of his own treatment techniques. Dr. Gebhart is aware that Dr. Glavan has been monitored through the Physician Effectiveness Committee at Grant Medical Center although he has had no direct contact with any members of that committee since he authored a letter to the Chairman, Ransome Williams, M.D., in July of 1990. In that letter Dr. Gebhart made a number of recommendations and observations regarding Dr. Glavan's treatment regimen. Furthermore, Dr. Gebhart testified that he has seen no evidence whatsoever of "denial" by Dr. Glavan and believes he is fully competent to practice medicine in this State.

These facts are established by the testimony of Dr. Gebhart (Tr. at I: 148-190).

9. James Stewart McCaughan, Jr., M.D., is a board certified thoracic and general surgeon who has worked with Dr. Glavan since approximately 1974. Dr. McCaughan has the utmost respect for Dr. Glavan as an

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anesthesiologist and during the time period of January through March of 1990, he had no suspicions whatsoever that Dr. Glavan may have been abusing substances or been suffering through a period of impairment.

These facts are established by the testimony of Dr. McCaughan (Tr. I: 215-224).

10. Robert Falcone, M.D., is a board certified surgeon who has worked with Dr. Glavan since approximately 1981. He has also been involved in approximately ten to twelve surgical cases with Dr. Glavan's since his return to active practice at Grant Medical Center in April of 1991. Dr. Falcone saw no indication of substance abuse by Dr. Glavan in the early months of 1990 nor has he had any cause whatsoever to question his abilities as an anesthesiologist.

These facts are established by the testimony of Dr. Falcone (Depo. pp. 5-19).

11. Dr. Glavan presently is in individual therapy with Dr. Gebhart and is monitored by the Physician Effectiveness Committee at Grant Medical Center with which he has an Aftercare Contract. He previously was a member of a "group" of unknown structure and focus. He has also spoken informally with medical doctors specializing in substance abuse treatment. Dr. Glavan has been abstinent since March, 1990.

These facts are established by the testimony of Dr. Glavan (Tr. at I: 45-47, II: 57-60, 74, 77, 94, 98-100, 102).

CONCLUSION

Dr. Glavan's admitted abuse of a Schedule II opioid analgesic for a three-month period in 1990 constitutes "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as contemplated under the controlling statute, Section 4731.22(B)(26), Revised Code. Dr. Glavan argued that past impairment is not the focus of the disciplinary rule. Although Dr. Glavan also argues that there is no evidence of impairment after March, 1990, the Hearing Examiner characterizes the evidence as illustrating no obvious symptoms of impairment. "Impairment" connotes more than a conspicuous patent problem and a finding of "impairment of ability to practice" may be properly premised solely upon past conduct. There can be no good faith dispute as to the potentially deleterious effect of inappropriate drug use by a practicing medical doctor.

Dr. Glavan's laudatory attempts to address his substance abuse and his consistent acceptance of responsibility for his behavior does not obviate the Board's statutorily-imposed duty to ensure the safety of the public by

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regulating the medical profession in Ohio. Although Dr. Glavan may have been promised confidentiality by the out-of-state residential treatment program, the fact that a breach of such promise occurred does not taint the information supplied to the Board. As Dr. Glavan has implied, any remedy for breach of confidentiality lies against the treatment program, not this Board. The Board is duty-bound to investigate reports of potentially impaired, incompetent or unqualified physicians and this duty must not be discharged in a cursory manner. Dr. Glavan is understandably frustrated and angered over this investigation and his perceived mistreatment at the hands of various caregivers and third parties. Nevertheless, the Hearing Examiner finds that "impairment" is apparent by reliable, probative and substantial evidence via Dr. Glavan's forthright admissions at hearing.

Dr. Glavan claims to have undergone drug screens which were clear of illicit substances in the period following his return to Ohio, however, he did not submit these results to the Hearing Examiner for consideration and was unwilling to detail the monitoring, both past and present, by the Physician Effectiveness Committee at his hospital. Although Dr. Glavan is presently a patient of Dr. Gebhart, no formal treatment contract was introduced to suggest a minimal duration for individual counseling. "Group therapy" was also briefly referenced at hearing. The information supplied regarding Dr. Glavan's present treatment regimen is simply too vague to evaluate. This Board must be satisfied that Dr. Glavan is not a risk to the public and, to this end, the following Order is proposed. The Hearing Examiner finds no aggravating factors to be considered in this Matter and finds mitigation in the form of interim rehabilitation, obvious remorse, remoteness of the instances of Fentanyl abuse, Dr. Glavan's forthright and responsible testimony before the Hearing Examiner and the absence of any prior disciplinary actions or sanctions against him.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Bogomir J. Glavan, M.D., to practice medicine and surgery in the State of Ohio, shall be SUSPENDED for an indefinite period of time. The suspension shall be STAYED and Dr. Glavan's certificate shall be subject to the following probationary terms, conditions and limitations for an indefinite period of time but not less than five (5) years:
 - a. Dr. Glavan shall obey all federal, state and local laws and all rules governing the practice of medicine in Ohio.
 - b. Dr. Glavan shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions with probation.

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- c. Dr. Glavan shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals or as otherwise requested by the Board.
- d. In the event that Dr. Glavan should leave Ohio for three (3) consecutive months, or reside or practice outside the state, he must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of the probationary period, unless otherwise determined by a motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- e. Dr. Glavan shall abstain completely from the personal use or possession of drugs, except for those prescribed, administered, or dispensed to him by another so authorized by law, who has full knowledge of Dr. Glavan's history of substance abuse.
- f. Dr. Glavan shall submit blood or urine specimens for analysis without prior notice at such times as the Board may demand.
- g. Dr. Glavan shall continue counseling with Dr. James Gebhart or with a therapist approved by the Board, at such intervals as are deemed appropriate by the counselor or therapist but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved therapist. Dr. Glavan shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
- h. Dr. Glavan shall have a monitoring physician approved by the Board, who shall monitor him and provide the Board with reports on his progress and status. Dr. Glavan shall ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Glavan must immediately so notify the Board in writing and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable. In lieu of this requirement, Dr. Glavan may arrange for the Physician Effectiveness Committee at Grant Medical Center to provide quarterly reports to the State Medical Board in place of an individual monitoring physician.
- i. Should Dr. Glavan obtain or apply for privileges at a hospital other than Grant Medical Center, he must provide a copy of this Order to the Chief of Staff at the hospital where he is seeking privileges. Furthermore, if Dr. Glavan changes employment, he must provide a copy of this Order to his new employer.

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2. If Dr. Glavan violates this probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the Stay Order and impose the indefinite suspension of his certificate.
3. Upon successful completion of the five (5) years probationary period, or as otherwise approved by the Board, Dr. Glavan's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

KEVIN P. BYERS
Kevin P. Byers
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE MINUTES OF NOVEMBER 13, 1991

REPORTS AND RECOMMENDATIONS

.....

Mr. Albert asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of Gregory S. Masimore, M.D.; Harjit S. Bharmota, M.D.; Clarence A. DeLima, M.D.; Bogomir J. Glavan, M.D.; and Elbert D. Lawrence, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Mr. Albert	- aye

Mr. Jost stated that he did have staff check to find out whether he had ever served as Supervising Member in the matter of Harjit S. Bharmota, M.D. A review of the enforcement file was made by staff, revealing no evidence that Mr. Jost ever saw the file or took any prosecutorial role. Mr. Jost indicated that he read and reviewed the hearing record, the proposed findings of fact, conclusions and order, and Dr. Bharmota's objections so that he could take part in the Board's deliberations in this matter.

Dr. Heidt stated that he reviewed all materials except those in the matters of Harjit S. Bharmota, M.D., and Clarence A. DeLima, M.D.

Dr. Hom stated that she did not review the materials in the matter of Harjit S. Bharmota, M.D., since she would be abstaining in this matter.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.



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EXCERPT FROM THE MINUTES OF NOVEMBER 13, 1991
IN THE MATTER OF BOGOMIR J. GLAVAN, M.D.

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REPORT AND RECOMMENDATION IN THE MATTER OF BOGOMIR J. GLAVAN, M.D.

.....

DR. GRETTER MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BOGOMIR J. GLAVAN, M.D. MS. ROLFES SECONDED THE MOTION.

.....

A roll call vote was taken on Dr. Gretter's motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Garg	- nay
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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May 8, 1991

Bogomir J. Glavan, M.D.
10440 Grant Lane
Pickerington, OH 43147

Dear Doctor Glavan:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) From January, 1990 through March, 1990, you sublingually self-administered Alfentanil, a Schedule II Controlled Substance, two to four times a week, including times when you were on anesthesiology call.

On or about April 9, 1990 you entered the Metro Atlanta Recovery Residence, Inc. (MARR) program for treatment of your chemical addiction. On or about June 26, 1990, you aborted your program with the Atlanta Recovery Professionals, Inc. (ARP), against staff advice, and returned to Ohio.

After refusing to provide the State Medical Board of Ohio a release to access your evaluation and treatment records from MARR and ARP, you were ordered by the State Medical Board of Ohio to an examination. This examination was conducted by Patrick McNamara, M.D., Addiction Medicine Specialist, Director Chemical Dependency Center, Flower Memorial Hospital on January 14, 1991. Based on this examination Dr. McNamara made a diagnosis of opiate abuse.

Such acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

Mailed 5/9/91

Bogomir J. Glavan, M.D.
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May 8, 1991

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Enclosures:

CERTIFIED MAIL #P 055 328 888
RETURN RECEIPT REQUESTED

cc: Jeffrey J. Jurca, Esq.