

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GREGORY X. BOEHM, M.D.

Appellant.

v.

STATE MEDICAL BOARD,

Appellee.

CASE NO. 01CVF-08-7821

STIPULATION OF DISMISSAL


By stipulation of the parties and for good cause shown, the within action is dismissed with prejudice. Costs are taxed to Appellant.

IT IS SO ORDERED.

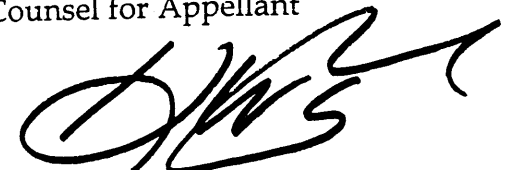
DATE

JUDGE

APPROVED:



Susan L. Gragel
Counsel for Appellant



Assistant Attorney General
Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
201 SEP 25 PM 2:47
CLERK OF COURTS

SEP 10 2001

**CONSENT AGREEMENT
BETWEEN
GREGORY X. BOEHM, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between GREGORY X. BOEHM, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

GREGORY X. BOEHM, M.D., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), "[i]mpairment 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," and Section 4731.22(B)(19), "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon violation of Sections 4731.22(B)(26) and 4731.22(B)(19), Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. GREGORY X. BOEHM, M.D., ADMITS that he holds a certificate to practice medicine and surgery in the State of Ohio, which certificate remains suspended pursuant to the terms of the Order of THE STATE MEDICAL BOARD OF OHIO entered on July 11, 2001, in the Matter of Gregory X. Boehm, M.D., (hereinafter "July 2001 Board Order"). The July 2001 Board Order was entered after a conclusion by the STATE MEDICAL BOARD OF OHIO, (hereinafter "BOARD"), that DOCTOR

SEP 10 2001

BOEHM violated Sections 4731.22(B)(5), (B)(8) and (B)(9) of the Ohio Revised Code based upon DOCTOR BOEHM's plea of guilty to one felony count of violation of Title 18, United States Code, Section 1347, Health Care Fraud. DOCTOR BOEHM further ADMITS that he has filed a Notice of Appeal of the July 2001 Board Order in the Court of Common Pleas of Franklin County, Ohio. A copy of the July 2001 Board Order is attached hereto and fully incorporated herein.

- D. GREGORY X. BOEHM, M.D., STATES that he is currently licensed to practice medicine and surgery in the State of Pennsylvania.
- E. GREGORY X. BOEHM, M.D., ADMITS that in or about 1994, he was treated by an associate physician in his psychiatric practice for Attention Deficit Hyperactivity Disorder, and further ADMITS that he was prescribed Ritalin by such physician. DOCTOR BOEHM further ADMITS that he continued treatment for Attention Deficit Hyperactivity Disorder from May 1995 until at least July 2000 with another psychiatrist, and that he was also prescribed Ritalin and later Adderall, in addition to an antidepressant, by such psychiatrist.

GREGORY X. BOEHM, M.D., STATES, and the BOARD ACKNOWLEDGES that DOCTOR BOEHM'S psychiatric treatment records reflect that he was assessed for chemical dependency by his treating psychiatrist in 1998 and by a certified chemical dependency counselor in 1995, and was found not to be chemically dependent. DOCTOR BOEHM further STATES and the BOARD ACKNOWLEDGES that DOCTOR BOEHM was assessed again for chemical dependency at The Cleveland Clinic Foundation Alcohol and Drug Recovery Center, a Board approved treatment facility in Cleveland, Ohio, in November 2000, and that his diagnosis following such assessment included Attention Deficit Disorder with Substance Disorder ruled out.

GREGORY X. BOEHM, M.D., ADMITS that he received inpatient treatment at The Cleveland Clinic Foundation Alcohol and Drug Recovery Center, from January 8, 2001, to February 16, 2001, and further ADMITS that during this admission he was diagnosed with Amphetamine Dependence and Attention Deficit Hyperactivity Disorder and that his use of Adderall was tapered.

GREGORY X. BOEHM, M.D., STATES, and the BOARD ACKNOWLEDGES, that the BOARD received a letter dated May 14, 2001, from his treatment providers at The Cleveland Clinic Foundation Alcohol and Drug Recovery Center stating that DOCTOR BOEHM was discharged from The Cleveland Clinic on February 16, 2001, after successfully completing more than 28 days of inpatient treatment and noting that DOCTOR BOEHM was in compliance with his aftercare contract. DOCTOR BOEHM further STATES, and the BOARD ACKNOWLEDGES, that the treatment providers at The Cleveland Clinic further indicated that DOCTOR BOEHM is able to practice medicine according to acceptable and prevailing standards of care and that his prognosis is good, provided that he continue full compliance with his aftercare treatment.

GREGORY X. BOEHM, M.D., further STATES, and the BOARD ACKNOWLEDGES that the BOARD has received information to support that DOCTOR BOEHM entered into an advocacy contract with the Ohio Physicians Effectiveness Program (OPEP) in or about April 2001 and that he remains in compliance with his advocacy contract with OPEP, as well as his aftercare contract with The Cleveland Clinic Foundation, to date.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, GREGORY X. BOEHM, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO to the following terms, conditions and limitations, which shall apply concurrently with those of the July 2001 Board Order:

- F. DOCTOR BOEHM shall not appeal and/or shall withdraw any appeal of the July 2001 Board Order upon ratification of this CONSENT AGREEMENT by THE STATE MEDICAL BOARD OF OHIO;

INTERIM MONITORING

- G. During the period that DOCTOR BOEHM's certificate to practice medicine and surgery in the State of Ohio is suspended pursuant to the July 2001 Board Order, DOCTOR BOEHM shall comply with the following terms conditions and limitations:

Obey All Laws and Terms of Probation

1. DOCTOR BOEHM shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio, and all terms of probation imposed by the United States District Court in criminal case number 1:00CR337;

Quarterly Declarations and Appearances

2. DOCTOR BOEHM shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;

3. DOCTOR BOEHM shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR BOEHM written notification of scheduled appearances, it is DOCTOR BOEHM's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR BOEHM shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Sobriety

4. DOCTOR BOEHM shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR BOEHM's history of chemical dependency;
5. DOCTOR BOEHM shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

6. DOCTOR BOEHM shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR BOEHM shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the BOARD;

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BOEHM shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR BOEHM shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR BOEHM. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR BOEHM shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screenings have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR BOEHM must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR BOEHM shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

All screening reports and supervising physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR BOEHM's quarterly declaration. It is DOCTOR BOEHM's responsibility to ensure that reports are timely submitted;

7. The BOARD retains the right to require, and DOCTOR BOEHM agrees to submit, blood or urine specimens for analysis at DOCTOR BOEHM's expense upon the BOARD's request and without prior notice. DOCTOR BOEHM's refusal to submit a blood or urine specimen upon request of the BOARD shall result in a minimum of one additional year of actual license suspension;

Rehabilitation Program

8. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BOEHM shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR BOEHM shall submit with each quarterly declaration required under this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

Aftercare/Physician Health Program

9. DOCTOR BOEHM shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider and with the terms of his advocacy contract with the Ohio Physicians Effectiveness Program, or another physician health program approved in advance by the BOARD, provided that, where terms of the aftercare contract or advocacy contract

conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Psychiatric Treatment

10. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BOEHM shall submit to the BOARD for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the BOARD, DOCTOR BOEHM shall undergo and continue psychiatric treatment quarterly or as otherwise directed by the BOARD. DOCTOR BOEHM shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered and submitting to psychotherapy as recommended for his psychiatric disorder. DOCTOR BOEHM shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the BOARD on a quarterly basis, or as otherwise directed by the BOARD. The psychiatric reports shall contain information describing DOCTOR BOEHM's current treatment plan and any changes that have been made to the treatment plan since the prior report; DOCTOR BOEHM's compliance with his treatment plan; DOCTOR BOEHM's mental status; DOCTOR BOEHM's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. DOCTOR BOEHM shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that DOCTOR BOEHM is unable to practice due to his psychiatric disorder. It is DOCTOR BOEHM's responsibility to ensure that quarterly reports are received in the BOARD's offices no later than the due date for DOCTOR BOEHM's quarterly declaration;

Releases

11. DOCTOR BOEHM shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the BOARD, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations;

PROBATIONARY CONDITIONS

- H. Upon reinstatement pursuant to the terms of the July 2001 Board Order, DOCTOR BOEHM shall be subject to the probationary terms, conditions and limitations set out in that Order, as well as to the following additional PROBATIONARY terms, conditions, and limitations:
 1. DOCTOR BOEHM shall continue to be subject to paragraphs G.1. through G.11. of this CONSENT AGREEMENT, with the proviso that due dates for

personal appearances and submission of documents required under this consent agreement and/or the July 2001 Board Order shall be calculated in accordance with the Board Order;

Monitoring Physician

2. Before engaging in the practice of medicine, DOCTOR BOEHM shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR BOEHM's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR BOEHM and who is engaged in the same or similar practice specialty. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR BOEHM's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis;

Further, the monitoring physician shall otherwise monitor DOCTOR BOEHM and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR BOEHM shall ensure that such 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, DOCTOR BOEHM must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR BOEHM shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR BOEHM's quarterly declaration. It is DOCTOR BOEHM's responsibility to ensure that reports are timely submitted;

Course on Controlled Substances

3. Before engaging in the practice of medicine, DOCTOR BOEHM shall provide acceptable documentation of satisfactory completion of the Intensive Course in Controlled Substance Management at the Case Western Reserve University School of Medicine;

Drug Associated Restrictions

4. DOCTOR BOEHM shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the BOARD thirty (30)

days prior to DOCTOR BOEHM 's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

5. DOCTOR BOEHM shall not, without prior BOARD approval, administer, dispense, or possess (except as allowed under paragraph G.4. above) any controlled substances as defined by state or federal law. In the event that the BOARD agrees at a future date to modify this CONSENT AGREEMENT to allow DOCTOR BOEHM to administer or dispense controlled substances, DOCTOR BOEHM shall keep a log of all controlled substances prescribed, administered or dispensed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR BOEHM's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

TOLLING PROVISIONS

- I. In the event that DOCTOR BOEHM should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR BOEHM must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
- J. In the event DOCTOR BOEHM is found by the Secretary of the BOARD to have failed to comply with any provision of this CONSENT AGREEMENT, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under the CONSENT AGREEMENT;

REQUIRED REPORTING BY LICENSEE

- K. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BOEHM shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR BOEHM shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments;
- L. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BOEHM shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR BOEHM further agrees to provide a copy of this CONSENT AGREEMENT by certified mail,

return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR BOEHM shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

FAILURE TO COMPLY

- M. During the periods of INTERIM MONITORING and PROBATION, any violation of paragraph G.4. or G.5. of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR BOEHM's certificate. DOCTOR BOEHM agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR BOEHM's certificate based on other violations of this CONSENT AGREEMENT;
- N. During the period of PROBATION, DOCTOR BOEHM AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR BOEHM shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code;
- O. During the period of PROBATION, DOCTOR BOEHM AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by paragraph G.6. of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code; and,
- P. During the period of PROBATION, DOCTOR BOEHM AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by paragraph G.8. of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR BOEHM appears to have violated or breached any term or condition of this CONSENT AGREEMENT, the BOARD reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of

the laws of Ohio occurring before the effective date of this CONSENT AGREEMENT.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR BOEHM has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR BOEHM agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

DOCTOR BOEHM shall not request termination of this CONSENT AGREEMENT prior to eligibility for termination of his probationary period under the July 2001 Board Order. In addition, DOCTOR BOEHM shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) year. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR BOEHM acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

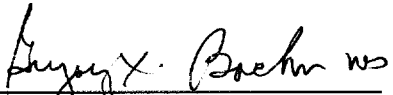
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR BOEHM hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. DOCTOR BOEHM acknowledges that his social security number will be used if this information is so reported, and DOCTOR BOEHM agrees to provide his social security number to the BOARD for such purposes.

EFFECTIVE DATE


It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.



GREGORY X. BOEHM, M.D.

9-7-01

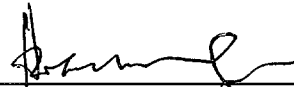
DATE



SUSAN GRAGEL, ESQ.
Attorney for Dr. Boehm

9-10-01

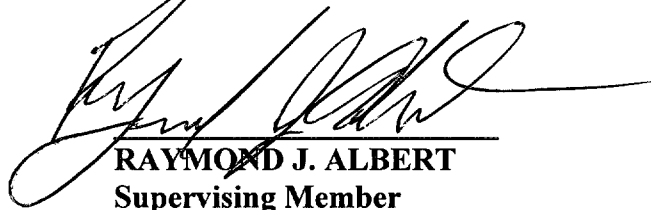
DATE



ANAND G. GARG, M.D.
Secretary

09/12/01

DATE



RAYMOND J. ALBERT
Supervising Member

9/12/01

DATE



REBECCA ALBERS, ESQ.
Assistant Attorney General

9/12/01

DATE

OHIO STATE MEDICAL BOARD

AUG 30 2001

82564E18

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GREGORY X. BOEHM, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 01CVF08 7821

JUDGE

ON COMPUTER

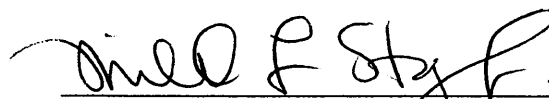
2

NOTICE OF APPEAL

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
01 AUG 10 PM 3:43
CLERK OF COURTS

Pursuant to Ohio Revised Code §119.12, appellant Gregory X. Boehm, M.D. hereby gives notice to the State Medical Board of Ohio that he will appeal the order of the State Medical Board of Ohio, mailed July 31, 2001, which suspended Dr. Boehm's certificate to practice medicine and surgery in the State of Ohio for a period of one year and imposed other conditions. A copy of the Board's order is attached hereto. This appeal is based on the grounds that the order of suspension and discipline was a) unsupported by reliable, probative and substantial evidence; b) was arbitrary, capricious and unreasonable resulting from bias, prejudice and speculation; c) resulted from an abuse of discretion; and d) violated due process and procedural fairness and regularity required in order to impose such a suspension.

Respectfully submitted,



ROTATORI, BENDER, GRAGEL, STOPER
& ALEXANDER CO., L.P.A.

By: Susan L. Gragel (#0002785)

Richard L. Stoper, Jr. (#0015208)

Leader Building, Suite 800

526 Superior Avenue, East

Cleveland, Ohio 44115

Telephone: (216) 928-1010

Fax: (216) 928-1007

Counsel for Appellant

AUG 30 2001

CERTIFICATE OF SERVICE

82564E20

A copy of the foregoing Notice of Appeal was served on this 8th day of August, 2001 by First Class U.S. Mail upon Hanz R. Wasserburger, Assistant Attorney General, Health and Human Services Sextion, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428 and by overnight delivery to The State Medical Board of Ohio, c/o Anand G. Garg, Secretary 77 S. High Street, 17th Floor, Columbus, Ohio 43215-6127.



RICHARD L. STOPER, JR.

An Attorney for Appellant Gregory X. Boehm, M.D.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

July 11, 2001

Gregory X. Boehm, M.D.
22100 McCauley Road
Shaker Heights, OH 44122

Dear Doctor Boehm:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 11, 2001, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG: jam
Enclosures

CERTIFIED MAIL NO. 7099 3220 0009 3045 9325
RETURN RECEIPT REQUESTED

Cc: Susan L. Gragel, Esq.
CERTIFIED MAIL NO. 7099 3220 0009 3045 9349
RETURN RECEIPT REQUESTED

26777 Lorain Avenue, Suite 716
North Olmstead, OH 44070
CERTIFIED MAIL NO. 7099 3220 0009 3045 9332
RETURN RECEIPT REQUESTED

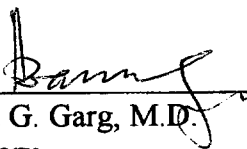
Mailed 7-31-01

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 11, 2001, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Gregory X. Boehm, 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)



Anand G. Garg, M.D.
Secretary

JULY 11, 2001

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

GREGORY X. BOEHM, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 11, 2001.

Upon the Report and Recommendation of Sharon W, Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. **SUSPENSION, PARTIALLY STAYED; PROBATION:** The certificate of Gregory X. Boehm, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of one (1) year. Upon reinstatement, the certificate of Gregory X. Boehm, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following **PROBATIONARY** terms, conditions and limitations for a period of at least five (5) years:
 - a. **Requests for Modification:** Dr. Boehm shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. **Laws in Ohio and Terms of Criminal Probation:** Dr. Boehm shall obey all federal, state and local laws, all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the United States District Court for the Northern District of Ohio, Eastern Division, in *United States of America vs. Gregory X. Boehm*, Case No. 1:00CR337.
 - c. **Appearances:** Dr. Boehm shall appear in person for interviews before the full Board or its designated representative during the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first personal appearance

must occur during the fourth month following. Subsequent personal appearances must occur every third month thereafter, upon Dr. Boehm's request for termination of the probationary period, and/or as otherwise requested by the Board.

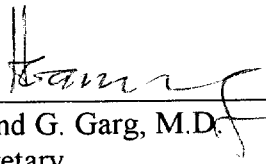
If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Boehm's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Boehm shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. **Quarterly Declarations:** Dr. Boehm shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Boehm shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
- f. **Clinical Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Boehm shall provide acceptable documentation of satisfactory completion of a clinical education program, to be approved in advance by the Board or its designee, related to Medicare and Medicaid Coding.
- g. **Absence from Ohio:** In the event that Dr. Boehm should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Boehm must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

- h. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Boehm violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
2. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Boehm's certificate will be fully restored.
3. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Boehm shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Boehm has privileges or appointments. Further, Dr. Boehm shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Boehm applies for or obtains privileges or appointments. Further, Dr. Boehm shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
4. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Boehm shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Boehm shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Boehm shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty-day interim, Dr. Boehm shall not undertake the care of any patient not already under his care.

(SEAL)


Anand G. Garg, M.D.
Secretary

JULY 11, 2001
Date

2001 JUN 12 P 3: 16

**REPORT AND RECOMMENDATION
IN THE MATTER OF GREGORY X. BOEHM, M.D.**

The Matter of Gregory X. Boehm, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 16, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated February 14, 2001, the State Medical Board of Ohio [Board] notified Gregory X. Boehm, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

1. On or about January 16, 2001, in the United States District Court for the Northern District of Ohio, Dr. Boehm pled guilty to one felony count of violation of Title 18, United States Code, Section 1347, Health care fraud.
2. The acts underlying Dr. Boehm's plea of guilty were that Dr. Boehm knowingly and willfully executed a scheme to defraud Medicaid and Medicare by submitting numerous billing claims which sought payment for medical services Dr. Boehm had not actually provided. As part of the Plea Agreement, Dr. Boehm agreed that, between October 1995 and July 1998, Medicare and Medicaid had overpaid him more than \$70,000.

The Board further alleged that the acts underlying Dr. Boehm's plea of guilty constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999, [and] "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code." In addition, the Board alleged that Dr. Boehm's plea of guilty constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

Accordingly, the Board advised Dr. Boehm of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On February 28, 2001, Susan L. Gragel, Esq., submitted a written hearing request on behalf of Dr. Boehm. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.
- B. On behalf of the Respondent: Susan L. Gragel, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

- A. Gregory X. Boehm, M.D.
B. Anna Lisa Clark
C. David Wilhelm
D. Susan Ford
E. Janet Davison

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1L: Procedural exhibits.
2. State's Exhibits 2-4: Certified copies of documents maintained by the United States District Court for the Northern District of Ohio, Eastern Division, in *United States of America vs. Gregory X. Boehm*, Case No. 1:00CR337. (Note: Dr. Boehm's social security number was redacted post-hearing by the Hearing Examiner.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Gregory X. Boehm, M.D. (Note: Dr. Boehm's social security number was redacted post-hearing by the Hearing Examiner.)

2. Respondent's Exhibit B: Copy of Dr. Boehm's diploma from the University of Cincinnati College of Medicine.
3. Respondent's Exhibits C and D: Copy of Dr. Boehm's certificates from the American Board of Psychiatry and Neurology in Psychiatry and in Child Psychiatry.
4. Respondent's Exhibit E: Certified copy of the Plea Agreement filed in the United States District Court for the Northern District of Ohio, Eastern Division, in *United States of America vs. Gregory X. Boehm*, Case No. 1:00CR337.
5. Respondent's Exhibit H: Copy of a certificate of accreditation from the Commission of Accreditation of Rehabilitation Facilities issued to the Psychiatric Professional Group for its partial hospitalization outpatient therapy.
6. Respondent's Exhibits I-1 and I-2: Copy of the certification from the State of Ohio Mental Health Agency issued to the Psychiatric Professional Group, The Institute for Child & Adolescent Wellness, Institute for Adult Development; and related documents.
7. Respondent's Exhibit J: Copy of the Psychiatric Professional Group's Professional Staff Roster.
8. Respondent's Exhibit K: Copy of the Psychiatric Professional Group's Roster of Skilled Nursing Facilities.
9. Respondent's Exhibit L-1: Copy of the Psychiatric Professional Group's Professional Activity Report.
10. Respondent's Exhibit M: Copy of an unidentified patient's medical record from the Psychiatric Professional Group.
11. Respondent's Exhibits O-1, O-2, O-3, O-6, O-7, and O-8: Various documents pertaining to CPT Codes.
12. Respondent's Exhibits P, Q, R-1, R-2, R-3, and R-4: Letters written in support of Dr. Boehm. (Note: the State did not have an opportunity to cross-examine the authors of these letters).
13. Respondent's Exhibit T: Curriculum vitae/biography of Jan Davidson.

2010-12-15 10:15

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

Background of Gregory X. Boehm, M.D.

1. Gregory X. Boehm, M.D., received a medical degree from the University of Cincinnati College of Medicine in 1976. He participated in a two-year residency in General Psychiatry and a two-year fellowship in Child and Adolescent Psychiatry at the same institution. Dr. Boehm is certified by the American Board of Psychiatry and Neurology in Psychiatry and in Child Psychiatry. (Hearing Transcript [Tr.] at 31-32; Respondent's Exhibits [Resp. Exs.] A-D).

Criminal Conviction

2. In 2000 [month and day illegible], in the United States District Court for the Northern District of Ohio, Eastern Division, Dr. Boehm was indicted for two felony counts in *United States of America vs. Gregory X. Boehm*, Case No. 1:00CR337. (State's Exhibit [St. Ex.] 4). On January 16, 2001, Dr. Boehm entered into a Plea Agreement by which he pled guilty to Count Two of the Indictment, which alleged that Dr. Boehm had violated Title 18, United States Code, Section 1347, Health Care Fraud. Count One was dismissed. (St. Ex. 2; St. Ex. 3 at 1). Pursuant to the Plea Agreement, Dr. Boehm admitted that he had "knowingly and willfully executed and attempted to execute a scheme and artifice to defraud Medicare and Medicaid" by submitting "numerous billing claims to Medicare and Medicaid which sought payment for medical services [Dr. Boehm] had not actually provided." (St. Ex. 4 at 12).
3. The Plea Agreement provides that the facts which "form the factual basis for [Dr. Boehm's] plea to count two of the indictment" are contained in the Plea Agreement. Accordingly, the Plea Agreement states that Dr. Boehm was a physician specializing in psychiatry, who operated a business under the name Psychiatric Professional Group, Inc. [PPG]. PPG had offices in North Olmstead, Boardman, Warren, and/or Beachwood, Ohio. PPG entered into agreements with a number of nursing homes, whereby PPG "agreed to provide mental health services, including psychiatric, psychological, psychotherapy, medical psychopharmacology, behavior and treatment plans." When the nursing home patients to whom PPG provided services were beneficiaries of Medicare and Medicaid, Dr. Boehm submitted claims for reimbursement to those agencies. (St. Ex. 2 at 4; St. Ex. 4 at 3-4).

7/11/2015

11:11:18 PM

From October 1995 through July 1998, Dr. Boehm saw patients in nursing homes under contract with PPG. In some of the nursing homes, PPG employed registered nurses who assisted Dr. Boehm by collecting and gathering information necessary for Dr. Boehm to perform pharmacological management services. (St. Ex. 2 at 4).

Medicare and Medicaid pay a physician for services performed by the physician's employees only if the services are performed "under the direct supervision of the physician." (St. Ex. 2 at 4). In the present matter, Dr. Boehm was not always present in the nursing home when the PPG nurse gathered information and documented it in the patient's record. "During those occasions, [Dr. Boehm] would arrive at the nursing home later the same day or evening to perform the pharmacologic management service and/or psychotherapy service." (St. Ex. 2 at 5).

The nurses working for Dr. Boehm documented the care they provided to the nursing home patients on a form called a Professional Activity Report. The Professional Activity Report provided four categories for approximating the amount of time the nurse spent with each patient. The categories available on the form included "initial patient assessment, full psychotherapy, half psychotherapy, or pharmacologic management." PPG used the Professional Activity Report not only as the nurses' time sheets, but also as the basis for determining the level of claims that would be billed to Medicare and Medicaid. (St. Ex. 2 at 5; St. Ex. 4 at 4-5).

The Plea Agreement explained that:

Pharmacologic Management is a physician service performed for a patient and includes prescription management, use and review of medication with no more than minimal psychotherapy. Psychotherapy involved face-to-face interaction with the patient whereby insight oriented, behavior modifying and/or supportive techniques are employed by a physician or appropriately trained and supervised non-physician health care professional.

(St. Ex. 2 at 4). Medicaid and Medicare reimburse physicians in greater amounts for psychotherapy services than for pharmacologic management services. Therefore, if a physician provides only pharmacological management but bills for psychotherapy, the physician is "up-coding," which is prohibited. (St. Ex. 2 at 5-6).

Nevertheless, when completing the Professional Activity Report, the nurses marked full psychotherapy or half psychotherapy service when performing a pharmacological management service that required more than ten or fifteen minutes. Moreover, the nurses charted in this manner even when not under the direct supervision of Dr. Boehm. The Plea Agreement stated that Dr. Boehm had been aware that the nurses were claiming full and half psychotherapy sessions even though they were not providing those services. (St. Ex. 2 at 5-6).

Finally, the Plea Agreement and Count 2 of the Indictment provided that, from October 1995 through July 1998, Dr. Boehm had received more than \$70,000.00 overpayment from Medicare and Medicaid because of such up-coding. (St. Ex. 2 at 6; St. Ex. 4 at 8, 12-16).

4. On January 16, 2001, the court accepted Dr. Boehm's guilty plea. The court placed Dr. Boehm in the Home Confinement Program with Electronic Monitoring for a period of six months. In addition, the court placed Dr. Boehm on probation for a term of two years and ordered Dr. Boehm to participate in an outpatient mental health program. Finally, the court ordered that Dr. Boehm pay a fine of \$15, 000.00 and restitution of \$71,370.24. (St. Ex. 3).

In determining the appropriate sentence, the court considered certain facts in mitigation. The court considered the fact that Dr. Boehm had accepted responsibility for his actions and that he had provided "substantial assistance" during the investigation of the offense underlying this matter. (St. Ex. 2 at 2-3; St. Ex. 3 at 6).

Dr. Boehm's Medicare and Medicaid Billing Practices

5. At hearing, Dr. Boehm testified that he and his wife, a psychologist, owned PPG, a practice that provided psychiatric and psychological services. PPG maintained offices in Warren, Boardman, and Beachwood, Ohio. In the early 1990s, PPG was certified by the Commission on Accreditation of Rehabilitation Facilities [CARF] and licensed by the State of Ohio, Department of Mental Health as a Community Mental Health Center, which provided PPG "facility status" and permitted PPG to provide outpatient partial hospitalization programs. (Tr. at 33-38; Resp. Ex. H, I-1).

Dr. Boehm testified that, shortly after PPG received accreditation for facility status, PPG was approached by Intercare, a corporation that represented Horizon Nursing Homes. Horizon Nursing Homes was a national organization that owned twenty-eight nursing homes in northeastern Ohio. (Tr. at 38-40).

Dr. Boehm further testified that Intercare had requested that PPG provide psychiatric and psychological services to the Horizon Nursing Homes in the area. Dr. Boehm realized that, in order to accept the offer, PPG would have to expand, learn to do Medicare and Medicaid billing, and hire more staff. PPG was not prepared to do so at that time, and Dr. Boehm declined the offer. Nevertheless, Intercare continued to petition PPG. Eventually, Intercare offered to pay PPG a stipend for their services and to do all necessary Medicare and Medicaid billing. In January 1995, PPG accepted Intercare's offer and agreed to provide services to four nursing homes. (Tr. at 38-40).

Three months later, Intercare informed PPG that Horizon had a new policy, and could no longer do the Medicare and Medicaid billing. Intercare offered, however, to train PPG employees to do the Medicare and Medicaid billing. (Tr. at 41-42).

Intercare trained Dr. Boehm's office manager to do the Medicare and Medicaid billing. Dr. Boehm stated that, despite this and additional training, his office manager had not been able to get any reimbursement from Medicare and Medicaid. PPG later hired another office manager, but she was also unsuccessful in obtaining reimbursement from Medicare and Medicaid. Subsequently, PPG hired a series of consulting and filling companies, but none were successful in procuring Medicare and Medicaid reimbursement. (Tr. at 41-44).

In July 1995, PPG hired Northeastern Ohio Medical Billing [NEOMED], an agency that provided billing services for other psychiatrists in the Warren area. Dr. Boehm explained that NEOMED advised PPG that all billing for services provided by a Community Mental Health Center that is certified in Ohio must be billed under the provider number of the medical director of the agency. Therefore, although PPG employed another psychiatrist, other psychologists, and nurses, the billing for those services was done under Dr. Boehm's provider number. (Tr. at 44-46).

Dr. Boehm testified that NEOMED did not properly handle PPG's billing. Dr. Boehm stated that, although PPG started receiving their first Medicare and Medicaid reimbursements after employing NEOMED's services, the patients for whom services were billed started receiving Explanation of Benefits forms. The Explanation of Benefits forms indicated that the patients had been billed for surgical rather than psychiatric or psychological services. PPG fired NEOMED. (Tr. at 46-47).

Eventually, PPG hired Physicians Medical Service Bureau. Physicians Medical Service Bureau began training PPG staff to enter the data necessary for billing into PPG's computers. Because of the time involved in organizing the new system and the time limits imposed by Medicare and Medicaid for billing, PPG was never able to properly submit bills for the services provided in early 1995. (Tr. at 48-49).

6. Dr. Boehm further stated that, in October 1995, Intercare advised that they were thrilled with the services PPG had been providing to the nursing homes. Intercare asked PPG to provide services at four additional nursing homes. At the same time, representatives of Intercare promised that they would continue to investigate ways that Intercare might resume billing Medicare and Medicaid for services furnished by PPG. Therefore, PPG agreed to provide services in the four additional nursing homes. Dr. Boehm testified that, at one point, PPG had been providing services to as many as twelve nursing homes at one time. (Tr. at 51-53; Resp. Ex. K).

7. Dr. Boehm testified that he had received a letter in August 1998, advising that he was the subject of a federal investigation. During the course of the investigation, 103 patient files and billing records were subpoenaed. Moreover, all Medicare reimbursement was placed in an escrow account for the next 180 days. Dr. Boehm stated that that escrow account had been renewed for four additional six-month periods. (Tr. at 69).

Dr. Boehm stated that, in his plea agreement, he had agreed to pay restitution of a little more than \$70,000.00. Dr. Boehm testified that the amount of restitution had been negotiated and was based on the amount of money in the escrow account at the time of the plea. Dr. Boehm further testified that \$70,000.00 was not the amount PPG was overpaid. Dr. Boehm testified that, if the amount had been based on the number of inappropriately billed visits, the amount would not have been more than \$5000.00. (Tr. at 69-70).

Dr. Boehm's Provision of Services to Nursing Home Patients

8. Dr. Boehm explained that, when PPG accepted a new nursing home contract, Dr. Boehm and a registered nurse interviewed every patient and performed a comprehensive diagnostic examination. Dr. Boehm stated that many of these patients exhibited major behavioral disturbances, which required significant evaluation, development of a behavioral plan, and management with medication. Dr. Boehm explained that if a nursing home patient was taking any psychotropic, anti-anxiety, anti-depressant or sleep medication, Dr. Boehm was required to follow the patient monthly for pharmacological management. (Tr. at 53-56).

Dr. Boehm testified that, in performing pharmacologic management services, Dr. Boehm and the nurse generally arrived at the nursing home at the same time and saw patients together. Nevertheless, approximately thirty percent of the time, the nurse arrived first and gathered data by interviewing nursing home staff, the patients, and the patients' family members. The nurse created a record of the findings. Dr. Boehm saw the patient later that day and reviewed the information gathered by the nurse. (Tr. at 56-60; Resp. Exs. L-1, M).

Dr. Boehm stated that PPG had paid the nurses on a "per patient" basis. PPG paid the nurses ten dollars for seeing a patient for pharmacological management. When performing a service more extensive than pharmacological management, PPG paid the nurses according to the amount of time they spent with the patient. Dr. Boehm stated that PPG had paid the nurses fifteen dollars for a "half" visit of more than twenty minutes, and twenty dollars for a "full" visit of more than forty-five minutes. (Tr. at 61-62; Resp. Ex. L-1).

9. Dr. Boehm testified that, in early 1997, a number of professional staff members, including psychiatrists and psychologists, left PPG. Dr. Boehm gave notice to some of the nursing

ess, many months passed
s. Therefore Dr Boehm

- Ms. Davison testified that she is the technical advisor for patient hospital coding, revenue cycle, and compliance. In addition, she is a member of the American Association of Professional Coders, and she has authored the book *Finally, Ms. Davison's Guide to Working with Insurance*.

services using billing codes. American Medical Association. Dr. Davison stated that it is the proper use, application, (9-6).

ural Terminology [CPT] numbers with the insurance on further testified that the is comprised of the codes are published in a y, the CPT book was ear, the AMA determined (13-144).

ined that it did not agree
y, Medicare published the
Coding System, Level II
ill Medicare carriers for
level III codes that can be
I codes often changed
wing a Medicare newsletter.

Ms. Davison further testified that, in 1992, the AMA developed E/M codes based on demands from Medicare. Physicians who practice in any specialty could use E/M codes. The codes are grouped by location of service, i.e. office visits, skilled nursing facility visits, etc. In 1992, Medicare did not issue any criteria for the use of E/M codes by psychiatrists. In 1997, however, Medicare issued guidelines for the use of E/M codes by psychiatrists. (Tr. at 151-153, 172-173).

In addition, Ms. Davison stated that, prior to 1997, Medicare had allowed physicians who provided psychiatric services to bill Medicare using CPT codes. In 1997, however, Medicare demanded that all Medicare Part B billing for psychiatry be billed through the HCPCS Level III codes rather than by CPT codes. This rule was in effect for one year. In 1998, the AMA altered CPT codes to include codes specifically related to psychotherapy. (Tr. at 146-148).

11. Ms. Davison provided testimony regarding the specific billing codes at issue in this matter. Ms. Davison testified that, from 1995 through 1998, the CPT codes included code 90862, the billing code for pharmacological management. (Tr. at 149-150; Resp. Ex. O-2). The Ohio Medicare Newsletter, April 1995, stated as follows:

90862: Pharmacologic management, including prescription, use and review of medication with no more than minimal medical psychotherapy.

This code may be reported when it is medically necessary for a physician to manage psychotropic medication for a patient who is in psychotherapy with a nonphysician colleague, or when a physician is managing a patient who has an organic type of disorder (e.g., senile dementia of the Alzheimer's type) primarily with use of medication. Based on RVU's [relative value units] the physician work is similar to code 99214 (equivalent to 25-30 minutes). If an evaluation and management service was provided on the same date of service as pharmacological management, the pharmacological management service would be included in the E/M service. This is a physician service and cannot be billed by a nonphysician or "incident to" a physician's professional service since the service involves all 3 components: prescription, use, and review of medication.

(Resp. Ex. O-7 at 8). The Ohio Medicare Newsletter, April 1996, provided that code 90862 "should be used when a patient is being treated for mental illness, primarily through the use of psychotropic medications and management of these medications. The history and examination of the patient in each session is focused primarily on the effects of and response to the medications that are being prescribed. This code may include brief and supportive psychotherapy." (Resp. Ex. O-7 at 11).

Ms. Davison testified that, during the time period at issue here, Medicare had provided that certain services of non-physician providers which are furnished "incident to" a physician's services may be covered by Medicare Part B. Nevertheless, the "incident to" requirements did not permit the physician to bill for the services of a nurse to a patient in a nursing home, unless the nurse was a certified nurse practitioner or a clinical nurse specialist. Moreover, in order for any non-physician services to a patient in a nursing home to be covered, the non-physician services must be furnished under the direct supervision of the physician. (Tr. at 161-165; Resp. Ex. O-7 at 1-2, 57).

12. The CPT book also contains codes for psychotherapy, codes 90842 through 90854. These codes should be used only when "psychotherapy dominates the session." Documentation to support billing with a psychotherapy code should specify a discussion with the patient; the topic of the discussion; the development of treatment plans, goals and objectives; and the patient's status with respect to goals and objectives. (Resp. Ex. O-7 at 9, 11).

Psychotherapy codes are "time based," which means that, when billing with a psychotherapy code, the physician must consider the amount of time spent with a patient. The Ohio Medicare Newsletter, April 1995, provides that 90842 requires "[m]inimum face to face contact of 75 up to 80 minutes"; 90843 requires "[m]inimum face to face contact of 20 minutes up to 30 minutes"; and 90844 requires "[m]inimum face to face contact of 45 minutes up to 50 minutes." (Resp. Ex. O-7 at 9). Moreover:

Time based individual psychotherapy codes should be reported according to the total time required to provide the service on a given day by the same provider. Individual psychotherapy codes have been designed to include both the cognitive portion of psychotherapy, the management of medication, and continuing medical diagnostic evaluation as well as the continuing review of diagnostic options (i.e., psychiatric, neurologic and other medical conditions influencing the treatment plans of the patient.) * * * Frequency and duration should be guided by the severity of the patient's condition.

(Resp. Ex. O-7 at 7).

13. Ms. Davison testified that the Medicare fee schedules for the period at issue in this matter had provided that, for pharmacological management pursuant to code 90862, a physician would be reimbursed, after deductibles and co-insurance, approximately \$23.00. For half-session psychotherapy pursuant to code 90843, after deductibles and co-insurance, a physician would be reimbursed approximately \$25.65. (Tr. at 167-168). On the other hand, Ms. Davison testified that reimbursement for the lowest level of an E/M code in 1996 was approximately \$25.11, and for level II, was approximately \$38.00. (Tr. at 169-170).

14. Dr. Boehm testified that he had not used E/M codes to bill for his service because he had believed that billing with E/M codes required a physical examination of one system. Dr. Boehm stated that he had not then believed that his visits had included a physical examination. Nevertheless, in a 1999 Medicare newsletter, Dr. Boehm learned that a psychiatrist could use E/M codes based on the intensity of their involvement with the patient rather than the time spent with the patient. As an example, Dr. Boehm testified that a mental status exam can be billed with an E/M code, and the specific code to be used would depend on the degree of intensity of the examination. (Tr. at 67- 68).

Testimony of Character Witnesses on Behalf of Dr. Boehm

15. Susan Ford testified at hearing on behalf of Dr. Boehm. Ms. Ford testified that she is a registered nurse who was employed by Dr. Boehm from 1995 through 1998. Ms. Ford testified regarding her responsibilities while working for Dr. Boehm. (Tr. at 125-132; Resp. Exs. L-1, M). Ms. Ford further testified that, when seeing patients in nursing homes, she had performed initial comprehensive examinations, medication checks, and behavior modification. Ms. Ford testified that medication checks required approximately fifteen to twenty minutes, while behavior modification took significantly longer and may have included forty-five minutes of discussion with family members by telephone. Ms. Ford stated that Dr. Boehm was not always with her during these visits. (Tr. at 129-133).

Ms. Ford testified that Dr. Boehm's quality of care was "[v]ery good to excellent, over and above the call of duty." (Tr. at 137).

16. Anna Lisa Clark, MSSA, LISW, CCDC III-E, testified at hearing on behalf of Dr. Boehm. Ms. Clark testified that she is an independent social worker and chemical dependency counselor. She is the Director of Professional Services at Bayshore Counseling Services in Sandusky and Port Clinton, Ohio. Ms. Clark testified that Bayshore Counseling Services is an agency whose mission is "[t]o prevent, intervene, and treat people that have mental illness or chemical dependency issues." (Tr. at 103-104).

Ms. Clark testified that Dr. Boehm has been the medical director and agency psychiatrist for Bayshore Counseling Services since 1995. Ms. Clark stated that Dr. Boehm has an excellent relationship with staff and patients. She further stated:

[It is] very difficult to find psychiatrists that have a good rapport with clients and work well professionally with agency staff. In addition, he is Board certified to treat both children and adults. It's very difficult to find someone who can do both of those. * * * [W]e have a very good working relationship with Dr. Boehm and we want to continue with that.

(Tr. at 104-109; Resp. Ex. Q).

17. David Wilhelm testified at hearing on behalf of Dr. Boehm. Mr. Wilhelm also submitted a letter in support of Dr. Boehm. Mr. Wilhelm testified that he is the Program Director at Lincoln Place in Youngstown, Ohio. Mr. Wilhelm explained that Lincoln Place is a residential center for youth, and has a staff of approximately two hundred. The referral sources for Lincoln Place include the Cuyahoga County Juvenile Courts, Cuyahoga County Children's Services Boards, and Cuyahoga County Family Services. Mr. Wilhelm further testified that many of the children at Lincoln Place are there because they have been given an opportunity to "work a program" rather than being sent to a detention center operated by the Department of Youth Services. (Tr. at 109-110, 115; Resp. Ex. P).

Mr. Wilhelm testified that Dr. Boehm provides psychiatric services to residents of Lincoln Place. Dr. Boehm manages medications for the residents, and treats the residents when they become unstable. Mr. Wilhelm stated that Dr. Boehm is an honorable man. He further stated that Dr. Boehm is always available, and is willing to see patients in their residential environment, rather than requiring that they be transported to Dr. Boehm's office. Finally, Mr. Wilhelm emphasized "Dr. Boehm's dedication and enthusiasm, his humor and warmth. His impact on residents and staff is always optimistic, an attitude that promotes problem-solving. I cannot stress enough how important and appreciated this attitude is, especially when this work seems impossible. * * * [H]is service to us has been irreplaceable." (Tr. at 111-123; Resp. Ex. P).

18. Dr. Boehm submitted additional letters of support from colleagues and employers. (Resp. Exs. R-1 through R-4).

LEGAL ISSUES

At hearing, the State argued that the Respondent should not be allowed to present evidence as to the facts underlying his conviction. The State further argued that such discussion of the underlying facts constitutes relitigation of the conviction. The Respondent countered that such facts are relevant to this matter and may be considered in mitigation.

The Franklin County Court of Appeals has recently addressed this issue. The court held: "To the extent that appellant contends the factual underpinnings of his conviction are appropriate considerations in the sanction the board imposes, appellant was free to introduce such evidence in mitigation as an effort to obtain a less severe sanction." *Wayne K. Auge, M.D. v. State Medical Bd. of Ohio* (Nov. 17, 1998), Franklin App. No. 98APE02-0157, unreported at 11. Accordingly, the facts underlying the conviction in this matter were considered when determining the appropriate sanction to be imposed.

FILED
2017 APR 12 PM 3:17

FINDINGS OF FACT

1. On or about January 16, 2001, in the United States District Court for the Northern District of Ohio, Gregory X. Boehm, M.D., pled guilty to one felony count of violating of Title 18, United States Code, Section 1347, Health Care Fraud.
2. The acts underlying Dr. Boehm's plea of guilty were that Dr. Boehm "knowingly and willfully executed and attempted to execute a scheme and artifice to defraud Medicare and Medicaid" by submitting "numerous billing claims to Medicare and Medicaid which sought payment for medical services [Dr. Boehm] had not actually provided." As part of the Plea Agreement, Dr. Boehm agreed that, between October 1995 and July 1998, Medicare and Medicaid had overpaid him more than \$70,000.

CONCLUSIONS OF LAW

1. The conduct of Gregory X. Boehm, M.D., as set forth in Findings of Fact 2, constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.
2. The conduct of Dr. Boehm, as set forth in Findings of Fact 2, constitutes "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.
3. Dr. Boehm's plea of guilty, as described in Findings of Fact 1, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

* * * * *

Dr. Boehm was convicted of Health Care Fraud based on his having billed Medicare and Medicaid for the provision of half and full psychotherapy sessions when, in fact, Dr. Boehm's nurse had only provided pharmacological management. Dr. Boehm argued that it would have been permissible for Dr. Boehm to bill using E/M codes and that reimbursement would have been greater than what he had received using psychotherapy billing codes. Therefore, Dr. Boehm argued, he had not actually been enriched by the upcoding. Nevertheless, Dr. Boehm stated that, at that time, he had not believed that he could have billed for the services using E/M codes. Therefore, his choice to bill Medicare and Medicaid using psychotherapy

Case No. 1:00CR337
U.S. District Court
Northern District of Ohio
Eastern Division

billing codes rather than pharmacological management billing codes reveals that Dr. Boehm had billed in a manner that maximized, to be best of his knowledge at that time, the amount of money he could obtain from Medicare and Medicaid.

There are, however, significant mitigating circumstances in this matter. It appears that Dr. Boehm did have difficulty developing appropriate office procedures to effectively and appropriately bill Medicare and Medicaid. Moreover, there is no indication that Dr. Boehm falsified patient records or made other attempts to conceal his billing practices. In addition, as noted by the court, Dr. Boehm accepted responsibility for his actions and provided "substantial assistance" during the criminal investigation. Finally, the testimony and evidence presented at hearing suggests that it is extremely unlikely that Dr. Boehm will commit any similar offense in the future.

PROPOSED ORDER

It is hereby ORDERED that:

1. **SUSPENSION, PARTIALLY STAYED; PROBATION:** The certificate of Gregory X. Boehm, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of one year. All but ninety days of said suspension are **STAYED**, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three years:
 - a. **Requests for Modification:** Dr. Boehm shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. **Laws in Ohio and Terms of Criminal Probation:** Dr. Boehm shall obey all federal, state and local laws, all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the United States District Court for the Northern District of Ohio, Eastern Division, in *United States of America vs. Gregory X. Boehm*, Case No. 1:00CR337.
 - c. **Appearances:** Dr. Boehm shall appear in person for interviews before the full Board or its designated representative during the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first personal appearance must occur during the fourth month following. Subsequent personal appearances must occur every third month thereafter, upon Dr. Boehm's request for termination of the probationary period, and/or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Boehm's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Boehm shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. **Quarterly Declarations**: Dr. Boehm shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - e. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Boehm shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
 - f. **Absence from Ohio**: In the event that Dr. Boehm should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Boehm must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 - g. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Boehm violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
2. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Boehm's certificate will be fully restored.

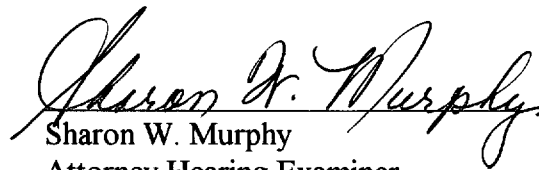
3. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:**

Within thirty days of the effective date of this Order, Dr. Boehm shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Boehm has privileges or appointments. Further, Dr. Boehm shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Boehm applies for or obtains privileges or appointments. Further, Dr. Boehm shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

4. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING**

AUTHORITIES: Within thirty days of the effective date of this Order, Dr. Boehm shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Boehm shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Boehm shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty-day interim, Dr. Boehm shall not undertake the care of any patient not already under his care.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF JULY 11, 2001

REPORTS AND RECOMMENDATIONS

Dr. Bhati announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Bhati asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of Gregory X. Boehm, M.D., and Philip A. Starr, D.O. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Somani | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Garg | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Bhati | - aye |

Dr. Bhati asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Somani | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Garg | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Bhati | - aye |

Dr. Bhati noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Bhati stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

GREGORY X. BOEHM, M.D.

Dr. Bhati directed the Board's attention to the matter of Gregory X. Boehm, M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Bhati continued that a request to address the Board has been timely filed on behalf of Dr. Boehm. Five minutes would be allowed for that address.

Dr. Boehm was accompanied by his attorney, Susan L. Gragel.

Dr. Boehm stated that he does accept the recommendation of the Board's Hearing Examiner. He's very sorry that his mistakes had to utilize the resources and time of the Board. Dr. Boehm stated that he wants to reassure everyone present that he will make sure that this doesn't happen again. He's willing to answer any questions Board members might have.

Dr. Bhati asked Ms. Gragel whether she had anything to say to the Board. She advised that she did not, and added that they are only here to respond to any questions Board members might have and to indicate a willingness to comply with the Report and Recommendation.

Dr. Bhati asked whether the Assistant Attorney General wished to respond.

Mr. Wasserburger stated that OAC 4731-13-24 reads, "(a) certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime." In January of this year, Dr. Boehm pled guilty to one felony count of violating Title 18, United States Code, Section 1347, Health Care Fraud, in the U.S. District Court. Dr. Boehm admitted that he knowingly and willfully executed or attempted to execute a scheme or artifice to defraud any healthcare benefit program or to obtain by means of false or fraudulent pretenses, representations or promises any of the money under the custody and control of such a program.

Mr. Wasserburger stated that it is important to note that in court Dr. Boehm pled guilty, legally admitting that he did, in fact, willfully defraud the government of upwards of \$70,000, as the evidence shows. Dr.

Boehm could have contested this had he gone to trial. He would have had every opportunity to bring mitigating evidence to the U.S. District Court to show, perhaps, why he didn't understand the billing procedures, why the billing procedures were confusing, or why he should not have been found guilty. Dr. Boehm didn't do this. He pled guilty. When the court in Cleveland accepted that guilty plea and issued a criminal conviction, as a matter of law, with the Board's own rules attesting to this, Dr. Boehm admitted everything.

Mr. Wasserburger stated that he respectfully takes issue with some of the Findings made by the Hearing Examiner; specifically, her conclusions relating to mitigation. As a Board representative in the Attorney General's office, he recognizes that mitigation is, in many cases, completely and totally proper. In fact, there was an amount of mitigating evidence offered by Dr. Boehm in this case that was completely appropriate and was properly considered by the Hearing Examiner. Unfortunately, looking very specifically at the transcript and the Findings of Fact and Recommendation of the Hearing Examiner, it is clear that evidence of "mitigation" was considered by the Hearing Examiner that very specifically attempted to cast doubt on whether Dr. Boehm had actually had the required intent to commit the crime to which he pled guilty. Mr. Wasserburger stated that it is not proper for hearing examiners to attempt to explain a criminal conviction at the hearing level. Again, Dr. Boehm had every opportunity to contest these charges in criminal court. He did not do that; he admitted to the crime. A Medical Board hearing is not the proper venue to try to relitigate the case. Mr. Wasserburger opined that, to that extent, the Hearing Examiner erred.

Mr. Wasserburger continued that the Attorney General must take issue with the Hearing Examiner recommending a 90-day suspension. It is very clear that a 90-day suspension for a felony committed in the course of practice is extremely lenient, given the facts of this case. The fact that a 90-day suspension was recommended in this case only gives credence to his argument that the mitigating evidence was given greater weight than it should have been given in this case. This was a federal felony, involving upwards of \$70,000, with a guilty plea. Mitigating by trying to explain office procedures was simply not appropriate. The Attorney General respectfully asks this Board to look at all of the evidence, given the arguments he's made, and to come down with a decision in this case that holds Dr. Boehm accountable for the crime he committed and the crime to which he admitted, and does not let him attempt to, after the fact, explain why he should not be held accountable.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GREGORY X. BOEHM, M.D. DR. SOMANI SECONDED THE MOTION.

Dr. Bhati stated that he would now entertain discussion in the above matter.

Dr. Egner stated that she found this to be a very interesting case to read, and it can be looked at from many sides; but she thinks that there are a few things that are inconsistent. Dr. Egner stated that it is hard for her to believe that Dr. Boehm would think his over-billing was \$5,000 and then agree to pay \$70,000. The Board really doesn't have evidence as to how much the over-billing really was. The Board only knows what the doctor thinks it is, and the fact that they settled for the amount that was in escrow. That places

some doubt in her mind with respect to Dr. Boehm's explanation that this matter involved just poor billing practices.

Dr. Egner admitted that she is impressed with the testimony that Dr. Boehm now knows how to bill and all of the rules, but all physicians face that. This isn't unique to psychiatry. All physicians and all specialties need to know what the rules are and abide by those rules.

Dr. Egner stated that she believes that the Board should be consistent with past actions. The Proposed Order is so far outside of the Guidelines that she can't agree with it. She added that she doesn't see much in the case to show why the Board should go outside the Guidelines. The Board rarely does in fraud cases.

Dr. Egner stated that, after hearing the rest of the discussion, she will probably make a recommendation for a one-year suspension with five years probation. That will put this Order within the Guidelines.

Dr. Somani stated that when he read this case, he was also a little bit disturbed about the whole situation. Physicians have to be on guard against up-coding. It is very obvious in this case that the nurse that Dr. Boehm hired would go in and do the appropriate pharmacological thing. Dr. Boehm should have known that the time spent allowed only one code. Clearly, if this went on for more than two years, Dr. Boehm cannot simply pass this off as "improper billing by a third party." The physician has the responsibility to ensure that coding is done appropriately. Dr. Somani stated that he could understand it if this was an isolated case, but up-coding for two and a half years is totally unacceptable. Dr. Somani concluded by stating that the sanction should not go outside of the Board's Disciplinary Guidelines.

Dr. Stienecker disagreed with Dr. Egner and Dr. Somani, stating that Dr. Boehm claims he over billed by \$5,000, and the government settled for \$70,000. The Board really doesn't know what this was. He doesn't believe anyone can really account for what occurred in this situation. This was a morass of problems. There were many situations involved here: pharmacologic management and the differences in what that constitutes, the terminology involved, changes in rulings; it comes down to what was probably the most expedient way of carrying out a billing situation.

Dr. Stienecker stated that one thing he found in the Proposed Order was a recommendation for a professional ethics course. Dr. Stienecker stated that that implies that this was an unethical process. It may well have been, but it could also have been an ignorance problem. He would be more inclined to suggest that Dr. Boehm undergo a coding seminar for physicians as opposed to an ethics course.

Dr. Stienecker advised that physicians who work in this milieu of governmental agencies and psychiatric services and so forth, are faced with a real morass of regulations, and he thinks that it is probable, and he accepts that Dr. Boehm might not have known what was going on. The fact that struck him most was that when the nursing homes discontinued the services and could not find replacements, Dr. Boehm took it upon himself, personally, to do the job. That shows that Dr. Boehm was concerned about his patients' welfare, and Dr. Stienecker stated that he would give Dr. Boehm the benefit of the doubt under those circumstances. Dr. Stienecker spoke in support of the 90-day suspension with the change of offering a coding seminar for his hours requirement rather than a professional ethics course.

Dr. Steinbergh stated that she agrees with most of Dr. Stienecker's analysis, adding that it is difficult for physicians to adhere to some of the Medicare and Medicaid billing codes. Physicians are not being reimbursed to the level that they should and medical care is jeopardized because of it. In this country, appropriate payment for mental health services is not encouraged. The stresses of providing mental health care at this time is overwhelming, and she certainly appreciates the probable care that Dr. Boehm gave his patients. Nevertheless, all physicians are obligated under the rules to bill appropriately for Medicare and Medicaid. When physicians plead guilty to fraud in that area, there, unfortunately, is a price to be paid. In terms of being consistent with the Board's guidelines and previous similar cases, this particular Order is too lenient. Dr. Steinbergh stated that she would agree with Dr. Egner's proposal.

Dr. Steinbergh continued that the one thing she does disagree with in regard to a course in ethics is that, although she thinks a coding course would be appropriate, it is really an ethical decision to use a code that does not describe exactly what service you have provided. That's a challenge for all physicians. It truly is an ethical decision when you decide, "I'm going to use this code even though I am not providing that particular service in order to gain maximum benefits for reimbursement." It is a question of ethics and she does think that an ethics course is appropriate.

Dr. Bhati reminded the Board that this act, to which Dr. Boehm pled guilty, was a willful act in the practice of medicine.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF GREGORY X. BOEHM, M.D. TO IMPOSE A ONE-YEAR SUSPENSION, WITHOUT STAY, AND TO INCREASE THE PROBATIONARY PERIOD TO A MINIMUM OF FIVE YEARS. SHE FURTHER MOVED TO REQUIRE DR. BOEHM TO COMPLETE A COURSE ON MEDICARE AND MEDICAID CODING. DR. SOMANI SECONDED THE MOTION.

Dr. Egner stated that she believes that Dr. Boehm will have enough time to complete both the coding course and the ethics course during the course of his suspension.

Mr. Browning asked when the suspension would become effective.

Dr. Steinbergh stated that the suspension would become effective 30 days from the date of mailing of notification of the Board's Order.

Mr. Browning stated that he thought that Dr. Boehm has been out of practice, and suggested that the suspension might be retroactive to when Dr. Boehm last practiced.

Several Board members indicated that Dr. Boehm did not stop practicing.

Dr. Bhati asked Dr. Boehm to address this issue.

Dr. Boehm indicated that his practice was limited, but he has practiced all this time. When he was on home

confinement, he was allowed work privileges during the day.

A vote was taken on Dr. Egner's motion to amend:

| | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - nay |
| | Dr. Somani | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - nay |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - nay |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |
| | Dr. Bhati | - aye |

The motion carried.

DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF GREGORY X. BOEHM, M.D. MS. SLOAN SECONDED THE MOTION. A vote was taken:

| | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Somani | - aye |
| | Dr. Buchan | - aye |
| | Mr. Browning | - aye |
| | Ms. Sloan | - aye |
| | Dr. Stienecker | - nay |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |
| | Dr. Bhati | - aye |

The motion carried.



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

February 14, 2001

Gregory X. Boehm, M.D.
22100 McCauley Road
Shaker Heights, Ohio 44122

Dear Doctor Boehm:

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, permanently 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) On or about January 16, 2001, in the United States District Court for the Northern District of Ohio, you pled guilty to one (1) felony count of violation of Title 18, United States Code, Section 1347, Health care fraud. A copy of the Plea Agreement is attached hereto and incorporated herein.

The acts underlying your plea of guilty as set forth in the attached Plea Agreement were that you knowingly and willfully executed a scheme to defraud Medicaid and Medicare by submitting numerous billing claims which sought payment for medical services you had not actually provided. As part of the Plea Agreement, you agreed that you were overpaid by Medicare and Medicaid more than \$70,000 between October 1995 and July 1998.

The acts underlying your plea of guilty as alleged in paragraph (1) above constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the acts underlying your plea of guilty as alleged in paragraph (1) above constitute "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Further, your plea of guilty as alleged in paragraph (1) above constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Mailed 2-15-01

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.

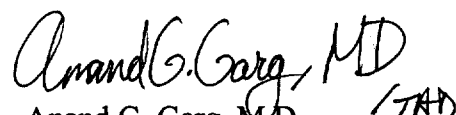
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/krt

Enclosures

Gregory X. Boehm, M.D.

Page 3

CERTIFIED MAIL # 7000 0600 0024 5140 4386
RETURN RECEIPT REQUESTED

cc: John F. McCaffrey, Esq.
Suite 1350
1111 Superior Avenue
Cleveland, Ohio 44114

CERTIFIED MAIL # 7000 0600 0024 5140 4294
RETURN RECEIPT REQUESTED

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Geri M. Smith, Clerk

U.S. District Court
Northern District of Ohio

By: 
Deputy Clerk

FILED
01 JAN 16 AM 11:58
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
AKRON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | CASE NO. 1:00CR337 |
| |) | |
| Plaintiff, |) | JUDGE JAMES S. GWIN |
| |) | |
| -vs- |) | |
| |) | <u>PLEA AGREEMENT</u> |
| GREGORY X. BOEHM, |) | |
| |) | |
| Defendant. |) | |

Pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the following agreement is entered into by and between the defendant, Gregory X. Boehm, and the United States of America, by Emily M. Sweeney, United States Attorney for the Northern District of Ohio, and John D. Sammon, Assistant United States Attorney.

1. The defendant, Gregory X. Boehm, having been advised of his constitutional rights, including his right to a trial by jury or by the Court, his right to confront and cross-examine witnesses against him, his right to call witnesses on his behalf, his right to be

represented by an attorney at such trial, and his privilege against self-incrimination, specifically and voluntarily waives these rights and privileges and agrees to enter a plea of guilty to Count 2 of the indictment charging him with health care fraud. The defendant, Gregory X. Boehm, agrees to plead guilty to this violation because he is, in fact, guilty of this offense.

2. The defendant understands that the offense of health care fraud, a violation of Title 18, United States Code, Section 1347, carries a maximum possible sentence of 10 years imprisonment, a fine of \$250,000, or both, a \$100 special assessment, and a maximum period of 3 years supervised release to follow any period of incarceration.

The defendant also understands that sentencing is within the discretion of the Court, that the Court is required to consider any applicable sentencing guidelines but that the Court may depart from those guidelines under some circumstances. The defendant further understands that the special assessment is due and payable on the date of sentencing.

3. The parties agree that the United States Sentencing Guidelines apply to the defendant's case and they anticipate that the computation of the applicable guidelines relating to the offense of conviction is set forth below. The defendant acknowledges that the Court is not required to accept this computation and that it is only a recommendation. The estimated guideline computation is as follows:

a. The Court can consider as relevant conduct, pursuant to §1 (B)1.3, the offense alleged in count 1 of the indictment;

b. The appropriate guideline section for the offense of conviction is §2F1.1(a), and for this section, the base offense level is 6;

c. Under §2F1.1(b)(1)(G), there is an increase of 6 levels to the base offense level since the total amount of loss is more than \$70,000.00;

d. Pursuant to §2F1.1(b)(2)(A) there is an increase of 2 levels since the offense involved more than minimal planning;

e. The United States will recommend to the Court that the defendant's offense level be reduced by 2 levels for acceptance of responsibility under §3E1.1(a) provided that the defendant expresses a recognition and affirmative acceptance of personal responsibility for his criminal conduct; and

f. The United States will move the Court prior to or at sentencing of the defendant for a two-level downward departure for substantial assistance under §5K1.1, provided that the defendant fully and completely complies with all provisions of this plea agreement.

4. If the Court accepts the guideline computation set forth in paragraph 3 above, the defendant will be sentenced at offense level 10. The Probation Department will determine the defendant's criminal history during its presentence investigation. The defendant agrees that he will not appeal or otherwise challenge through post-conviction motions a sentence that is in accordance with this plea agreement.

5. The United States agrees to dismiss count one of the indictment at the time of sentencing.

6. The defendant, Gregory X. Boehm, and the government agree that the following facts are true and form the factual basis for the defendant's plea to count two of the indictment:

a. Gregory X. Boehm is a physician licensed to practice medicine in the State of Ohio and is Board certified in general psychiatry and Board certified in child and adolescent psychiatry. He operated his practice under the name Psychiatric Professional Group, Inc. ("PPG") and maintained offices at various times in Beachwood, Boardman, North Olmsted, and Warren, Ohio.

b. Gregory X. Boehm and PPG entered into various agreements with several nursing homes located throughout Northeast Ohio whereby PPG agreed to provide certain psychiatric and psychological services. Under these agreements, Gregory X. Boehm treated nursing home patients who were covered by Medicare and Medicaid. Medicare and Medicaid pay physicians for certain services only if the physician performs them or they are performed by the physicians employees under the direct supervision of the physician.

c. From October 1995 through July 1998, Gregory X. Boehm traveled to the several nursing homes under contract with PPG. At some, but not all of the nursing homes, PPG employed a Registered Nurse or Masters degree nurse (collectively referred to as "PPG nurse") for the purpose of collecting and gathering patient information necessary for Gregory X. Boehm's performing a Pharmacologic Management service for the nursing home patient.

d. Pharmacologic Management is a physician service performed for a patient and includes prescription management, use and review of medication with no more than minimal psychotherapy. Psychotherapy involves face-to-face interaction with the patient whereby insight oriented, behavior modifying and/or supportive techniques are employed by a physician or appropriately trained and supervised non-physician health care professional.

e. The patient information obtained by the PPG nurse was consolidated in the form of a written notation made in the patient's chart. On a number of occasions Gregory X. Boehm was not present within the nursing home when the PPG nurse obtained the patient information and prepared the note for the patient's chart. During those occasions, Gregory X. Boehm would arrive at the nursing home later the same day or evening to perform the Pharmacologic Management service and/or psychotherapy service.

f. The source document used by PPG to bill for services rendered by Gregory X. Boehm, including Pharmacologic Management, was a form called a "Professional Activity Report." This form was generally prepared by one of the PPG nurses. The form identified the nursing home, the patient, the patient's diagnosis, and one of four categories of service rendered to the patient (*e.g.*, initial patient assessment, full psychotherapy, half psychotherapy, or pharmacologic management). In addition to serving as the source document for generating claims for reimbursement from Medicare and Medicaid, the Professional Activity Report was also used as the PPG nurse's time sheet.

g. On those occasions when the information gathering process for a Pharmacologic Management service took longer than 10 or 15 minutes for an individual patient and the PPG nurse was not under the direct supervision of Gregory X. Boehm, that portion of the Professional Activity Report for a "full" or "half" psychotherapy service was marked, rather than the portion of the report for a pharmacologic management service.

h. During those times, Gregory X. Boehm knew that the nurse was not providing psychotherapy services to the nursing home patients identified on the Professional

Activity Report. If the patient service ultimately provided was only the Pharmacologic Management Service, then a claim for Psychotherapy was not justified. Such conduct is prohibited and is referred to as "up-coding."

i. The Medicare and Medicaid reimbursement rate for a "full" or "half" Psychotherapy service is greater than the reimbursement paid for the Pharmacologic Management service.

j. From October 1995 through July 1998, Gregory X. Boehm was over paid by Medicare and Medicaid more than \$70,000. This amount represents an overpayment on Pharmacologic Management services where claims for "full" or "half" Psychotherapy services were submitted.

7. The defendant, Gregory X. Boehm, shall cooperate with the United States Attorney's Office for the Northern District of Ohio by providing truthful, complete, and forthright information, whenever, wherever, to whomever, and in whatever form an Assistant United States Attorney in the Northern District of Ohio requests. The term "whatever form" includes, but is not limited to, all responses to questions; sworn, written statements; interrogatories; sworn testimony before a grand jury; and sworn testimony in court. The term "whomever" includes, but is not limited to, all federal criminal law enforcement agencies.

8. The defendant, Gregory X. Boehm, agrees to surrender any claim that he or Psychiatric Professional Group, Inc., may have to monies now held in an escrow account maintained by the Health Care Finance Administration through its carrier, Nationwide Mutual Insurance Company. These monies total approximately \$71,370.24. The defendant and the

government agree that an order of restitution to Medicare and Medicaid shall be in the amount currently held in the escrow account maintained on behalf of the defendant and/or Psychiatric Professional Group as identified herein.

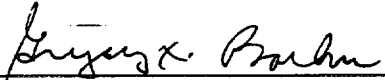
9. The United States agrees that it will bring no further criminal charges against the defendant relating to the false claims that are charged in the indictment or that are the subject of the restitution order described in paragraph 8 above. The government further agrees that it will bring no further criminal charges against the defendant based upon facts currently within the knowledge of the United States Attorney's office for the Northern District of Ohio or the Department of Health and Human Services, Office of the Inspector General. The government also agrees that it will bring no civil false claims action or civil action based in common law liability against the defendant relating to the facts and circumstances charged in the indictment.

10. The defendant recognizes that a plea of guilty to count two of the indictment may result in exclusion from his participation as a physician in the Medicare and Medicaid reimbursement program for a minimum period of five years. The defendant also acknowledges that his guilty plea may affect his license to practice medicine in the State of Ohio.


11. The defendant, Gregory X. Boehm, and his attorney, John F. McCaffrey, acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty. This plea agreement sets forth the full and complete terms and conditions of the agreement between defendant, Gregory X. Boehm, and the government.

12. The defendant, Gregory X. Boehm, declares that his offer to plead guilty is freely and voluntarily made and that he is fully satisfied with the assistance provided by his attorney.

Dated: 1/6/01

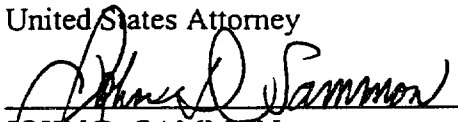

GREGORY X. BOEHM
Defendant

Dated: 1/6/01



JOHN F. McCAFFREY, Esq.
Counsel for Defendant

EMILY M. SWEENEY
United States Attorney

Dated: 1-9-01


JOHN D. SAMMON
Assistant United States Attorney
Registration No. 0033601
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2600
Tel. No. (216) 622-3829
Fax No. (216) 522-8354
E-Mail: john.sammon@usodj.gov

APPROVED:


UNITED STATES DISTRICT JUDGE

1/14/2001
Date